Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B03
PLR-126223-14

Date:
December 24, 2014

Taxpayer =

Q =

R =

S =

A =

D =

Year Y =

X =

Dear :

This responds to the letter dated July 2, 2014 submitted on your behalf by your authorized representative. That letter requests an extension of time for Taxpayer to file a request to automatically change its method of accounting for the recognition of expenses related to price protection rebates pursuant to Revenue Procedure 2011-14, 2011-1 C.B. 330. This request is made in accordance with sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Taxpayer is a limited

liability company and is treated as a partnership for U.S. federal income tax purposes. The outstanding member interests of Taxpayer are owned by Q and R, which are both limited liability corporations and are both wholly owned by S, a C Corporation. Taxpayer uses the accrual method of accounting and has an annual accounting period ending on D.

FACTS

Taxpayer is in the business of X. For its Year Y Tax Year Taxpayer engaged Accounting Firm A to prepare and file Form 3115 Application for Change in Accounting Method, for an automatic change in method of accounting for its recognition of expenses relating to price protection rebates under Rev. Proc. 2011-14, Appendix § 19.07, for its Year Y Tax year (the "method change").

Section 6.02(3)(a) of Rev. Proc. 2011-14 provides that a taxpayer changing a method of accounting generally must complete and file the application in duplicate. The original application must be attached to the taxpayer's timely filed (including any extension) original U.S. federal income tax return implementing the change in method of accounting for the year of change. A copy of the application must be filed with the IRS National Office no earlier than the first day of the year of change and no later than the date the taxpayer files the original with the federal income tax return for the year of change.

The Year Y tax return was prepared on a basis consistent with the Method Change being made for the Year Y tax year. Pursuant to the requirements of Section 6.02(3)(a)(ii) of Rev. Proc. 2011-14, Accounting Firm A filed the National Office Copy. Accounting Firm A failed to include the original election statement with the timely filed return. This was the result of an inadvertent administrative error on the part of A staff. Following this discovery A staff contacted an S tax manager regarding the inadvertently omitted election and discussed filing a ruling request for an extension of time to file the election. The S tax manager requested that Accounting Firm A prepare and file a ruling request for such an extension of time for Taxpayer.

Taxpayer has represented that it is not aware of any knowledge on the part of the Internal Revenue Service of Taxpayer's failure to timely file the election. It represents that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662. Taxpayer has represented that it is not using hindsight in requesting this relief and that no specific facts have changed since the original due date for filing the election that makes it advantageous to Taxpayer. Taxpayer represents that the requested relief will not result in a lower tax liability for Taxpayer and its partners for all taxable years affected by the election than they would have had if the election had been timely made. Taxpayer represents that the period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the

taxable year in which the election should have been filed or for any taxable year that would have been affected by the election had the election been timely made.

LAW AND ANALYSIS

Section 1.446-1(d)(2)(i) of the Income Tax regulations provides that a taxpayer that changes a method of accounting must secure the consent of the Commissioner. Section 6.01 of Rev. Proc. 2011-14 provides that the consent of the Commissioner is granted to any taxpayer to change its method of accounting for a method described in the revenue procedure as long as a taxpayer complies with all the applicable provisions of the revenue procedure and implements the change in the method of accounting for the requested year of change.

Section 6.02(3)(a) of Rev. Proc. 2011-14 provides that a taxpayer changing a method of accounting pursuant to the revenue procedure must complete and file the application in duplicate. Section 6.02(3)(a)(i) provides that the original application must be attached to the taxpayer's timely filed (including any extension) original U.S. federal income tax return implementing the change in method of accounting for the year of change. Section 6.02(3)(a)(ii)(A) provides that a copy of the application must be filed with the IRS National Office no earlier than the first day of the year of change and no later than the date the taxpayer files the original with the federal income tax return for the year of change.

Section 6.02(3)(d)(i) of Rev. Proc. 2011-14 provides an automatic extension of six months from the due date of the return for the year of change (excluding any extension) to file an application, provided certain conditions are met. If these conditions are not met, an extension will only be granted if the requirements of section 301.9100-3 of the regulations are satisfied.

Section 301.9100-1(a) gives the Service discretionary authority to grant a reasonable extension of time to make a regulatory election, provided that the time for making such election is not expressly prescribed by statute. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that

the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer

> (i) requests relief before the failure to make the regulatory election is discovered by the Service;
> (ii) inadvertently failed to make the election because of intervening events beyond the taxpayer's control;
> (iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
> (iv) reasonably relied on the written advice of the Service; or
> (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

The affidavits presented show that Taxpayer acted reasonably and in good faith, having reasonably relied on a qualified tax professional who failed to make the election. In addition, Taxpayer requested relief before the failure to make the regulatory election was discovered by the Service.

Under section 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer--

> (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account section 1.6664-2(c)(3) of the Income Tax Regulations) and the new position requires a regulatory election for which relief is requested;
> (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
> (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time relief is requested and was not informed in all material respects of the required election, and its related tax consequences and chose not to make the election. Taxpayer intended to make the election and requested Accounting Firm A to do so. The failure to make the election was due to an administrative processing error. Furthermore Taxpayer is not using hindsight in requesting relief. Taxpayer has represented that specific facts have not changed since the original deadline that make the election advantageous to Taxpayer.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

Under these criteria, the interests of the government are not prejudiced in this case. Taxpayer has represented that granting relief would not result in Taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than if the election had been timely made (taking into account the time value of money). Furthermore, the taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made, are not closed by the period on assessment.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. The section provides, in relevant part, that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made). Similarly section 6.02(3)(d)(ii) of Rev. Proc. 2011-14 provides that a taxpayer that fails to file the application for the year of change as provided in sections 6.02(a), (b), or (d)(1) of the revenue procedure will not be granted an extension of time under section 301.9100-3 except in unusual and compelling circumstances.

Based on the facts and representations submitted, unusual and compelling circumstances have been demonstrated. The failure to timely file the original Form 3115 was solely a result of an administrative processing error by Accounting Firm A, and was not an error on Taxpayer's part, the Year Y Tax Return was prepared on a basis consistent with the method change having been made, and the National Office copy was timely filed.

Accordingly, the consent of the Commissioner is hereby granted to Taxpayer for an extension of time to file the Form 3115 required to automatically change its method of accounting for the recognition of expenses related to price protection rebates pursuant to Revenue Procedure 2011-14, 2011-1 C.B. 330 for the Year Y tax year. This extension shall be for a period of 60 days from the date of this ruling. A copy of this letter must be attached to any income tax return to which it is relevant.

Except as expressly set forth above, we express no opinion concerning the tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether: (1) Taxpayer is eligible to file the Form 3115 at issue under Rev. Proc 2011-14; (2) Taxpayer otherwise meets the requirements of Rev. Proc. 2011-14; or (3) Taxpayer's proposed method of accounting described in Form 3115 is a permissible method of accounting.

This ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Sincerely,

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Christopher F. Kane
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: