

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-103191-15
PLR-103193-15

Date: June 9, 2015

Legend:

Taxpayer

Dear :

This is in response to a recent letter requesting certain extensions of time for Taxpayer. Specifically, Taxpayer requests extensions to file the original copies of three (3) separate Forms 3115 (dealing with three (3) separate automatic accounting method changes) with Taxpayer's 2012 U. S. Federal income tax return. This is required so that all three (3) automatic method change requests will be treated as timely made for the taxable year ended December 31, 20 .

The requests are based on sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer is the corporate parent of a multinational group of companies. Taxpayer files Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, on a calendar year basis. The un-extended due date for Taxpayer's 20 Form 1120-F was March 15, 2013. However, because Taxpayer did not have all required information necessary to file a complete and accurate 20 Form 1120-F by March 15, 2013, the taxpayer internally prepared Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax Information, and Other Returns*. Taxpayer intended to file the Form 7004 for the 20 tax year on or before March 15, 2013.

Taxpayer mailed Form 1120-F for the 2012 tax year to the IRS on September 13, 2013. This 2012 Form 1120-F was mailed prior to the date that Taxpayer believed to be the filing deadline, assuming that Form 7004 had been timely filed (providing taxpayer with an automatic 6 month extension of time to file its 2012 Form 1120-F).

However, due to an oversight by a former employee of Taxpayer who was responsible for filing the extension (and for ensuring Taxpayer met all of its 2012 filing requirements), the Form 7004 was apparently not filed with the IRS for the 2012 tax year. This former employee did not alert Taxpayer to any such problem prior to his departure from Taxpayer.

When Taxpayer later received notification from the IRS indicating Taxpayer had not timely filed Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, for the tax year ended December 31, 2012, Taxpayer promptly contacted the former employee. Taxpayer sought verification from the former employee that the 2012 Form 7004 had been timely filed. The former employee stated that he could not specifically recollect filing the Form 7004. The IRS has no record of receiving Taxpayer's 2012 Form 7004. Nevertheless, Taxpayer's intention to request an automatic extension to file its 2012 income tax return is evidenced by the fact that Taxpayer made an extension payment on March 13, 2013.

Taxpayer attached three (3) Forms 3115, *Application for Change in Accounting Method*, to its 2012 Form 1120-F, mailed on September 13, 2013. These Forms 3115 requested the following three (3) automatic method changes:

1. Automatic change number 46, entitled "Cooperative Advertising," discussed at section 19.05 of the Appendix of Rev. Proc. 2011-14.
2. Automatic change number 78, entitled "Intangibles," discussed at section 10.05 of the Appendix of Rev. Proc. 2011-14.
3. Automatic change number 135, entitled "Rebates and Allowances," discussed at section 19.07 of the Appendix of Rev. Proc. 2011-14.

Section 6.02(3) of Rev. Proc. 2011-14 requires a taxpayer making a change under the automatic consent procedures to complete and file an application on Form 3115 in duplicate. The original Form 3115 must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change. A copy of the Form 3115 application must be filed with the IRS National Office or with the Ogden, Utah office, as appropriate, no earlier than the 1st day of the year of change and no later than when the original is filed with the federal income tax return for the year of change.

As explained above, given that one of Taxpayer's prior employees failed to file Form 7004, the original three (3) Form 3115s listed above were not attached to a timely

filed original federal income tax return for the year of change (although copies of the three (3) Forms 3115 were timely filed with the IRS National Office on January 25, 2013).

Accordingly, Taxpayer now requests relief under section 301.9100-3 to obtain extensions of time with respect to its filing requirements for the three (3) Forms 3115 at issue. More specifically, Taxpayer has requested that the Forms 3115 that were previously filed by Taxpayer now be considered as timely filed by the IRS.

The examining agent does not object to the granting of Taxpayer's request that the Forms 3115 that were previously filed by Taxpayer now be considered as timely filed by the IRS.

LAW & ANALYSIS

Section 446(d) of the Internal Revenue Code and section 1.446-1(e)(2)(i) of the Income Tax Regulations require a taxpayer to obtain the consent of the Commissioner before changing a method of accounting for Federal income tax purposes. To obtain the Commissioner's consent, section 1.446-1(e)(3)(i) generally requires a taxpayer to timely file a Form 3115. Rev. Proc. 2011-14 provides procedures by which a taxpayer may obtain the automatic consent of the Commissioner for specified changes in methods of accounting under section 446(e).

Section 6.02(3) of Rev. Proc. 2011-14 requires a taxpayer making a change under the automatic consent procedures to complete and file an application on Form 3115 in duplicate. The original Form 3115 must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change. A copy of the Form 3115 application must be filed with the IRS National Office or with the Ogden, Utah office, as appropriate, no earlier than the 1st day of the year of change and no later than when the original is filed with the federal income tax return for the year of change.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than

six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

In this case, Taxpayer has represented that Taxpayer is not foreclosed from being granted an extension of time under section 9100 of the Regulations on Procedure and Administration based on any condition contained in section 301.9100-1.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides 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 Taxpayer to make the election.

In this case, Taxpayer has represented that Taxpayer acted reasonably and in good faith because Taxpayer requested relief before the failure to make the regulatory election was discovered by the Service. Thus, Taxpayer is not foreclosed from being granted an extension of time under section 9100 of the Regulations on Procedure and Administration based on section 301.9100-3(b)(1).

Under section 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if 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 Taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) 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.

In this case, Taxpayer has represented that none of the factors set forth in section 301.9100-3(b)(3) above apply. Thus, Taxpayer is not foreclosed from being considered to have acted reasonably and in good faith by any of the conditions contained section 301.9100-3(b)(3).

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be deemed to be prejudiced by the granting of relief. Under paragraph (c)(1)(i), the interests of the government are deemed to be prejudiced if granting relief would result in a 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). Under paragraph (c)(1)(ii), the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. Paragraph (c)(1)(ii) provides that the IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor certifying that the interests of the government are not prejudiced.

In this case, Taxpayer has represented that Taxpayer is not foreclosed from relief by any of the conditions contained section 301.9100-3(c)(1).

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. This section provides, in relevant part, that the interests of the government are deemed to be prejudiced by granting an extension of time except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested is subject to the procedure described in section 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner) or if the accounting method regulatory election for which relief is requested requires an adjustment under section 481(a). See *also* section 6.02(3)(d)(ii) of Rev. Proc. 2011-14.

Taxpayer has represented that there are unusual and compelling circumstances warranting relief. Taxpayer has historically timely filed its income tax returns. Taxpayer's failure to do so in this instance was the result of an inadvertent error by one of Taxpayer's former employees. It was not a deliberate disregard for the filing deadline.

CONCLUSION

Based solely on the facts and representations submitted, the Commissioner consents to an extension of time for Taxpayer to file the original copies of Forms 3115 (as discussed in detail above) with its 20 United States Federal income tax return. Therefore, the Forms 3115 that were previously filed by Taxpayer will now be considered as timely filed by the IRS. A copy of this letter should be associated with the Forms 3115 that accompanied taxpayer's Federal tax return filed for the taxable year ended December 31, 20 .

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted, it is subject to verification by the Tax Court or by any party with jurisdiction over the matter within the Internal Revenue Service.

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
(Income Tax & Accounting)