

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B03  
PLR-135799-18

Date:  
July 02, 2019

In Re:

TY:

LEGEND:

Taxpayer	=
Parent	=
S1	=
S2	=
S3	=
S4	=
S5	=
S6	=
S7	=
Advisor	=
Attorney/P.O.A.	=
	=
Taxable Year	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=
Date6	=
Date7	=

Dear \_\_\_\_\_ :

This responds to a letter ruling request dated November 29, 2018, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an original Form 3115, Application for Change in Accounting Method, pursuant to section 6.03(1)(a)(i) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, with Parent's timely filed consolidated federal income tax return for the taxable year ending Date1.

#### FACTS

Taxpayer represents the facts are as follows:

Parent and its subsidiaries are a consolidated group of corporations for U.S. federal income tax purposes, with Parent as the group's common parent. On Date2, Taxpayer identified incorrect recovery periods being utilized for certain fixed assets. Taxpayer engaged Advisor to assist with additional review and the filing of Form 3115. As a result of this review, Taxpayer intended to file a Form 3115 to change its method of accounting for depreciation under section 168 of the Internal Revenue Code (Code) for Taxpayer and its subsidiaries, S1, S2, S3, S4, S5, S6, and S7 for the tax year ended Date1. Taxpayer intended to file this Form 3115 under the automatic consent procedures set forth in Rev. Proc. 2015-13.

On Date3, Taxpayer engaged Advisor to review and correct any improperly classified and depreciated assets for tax years ended Date4 through Date1. On Date5, the final Form 3115 was completed for Taxpayer to file with the IRS and, on Date6, Taxpayer mailed a copy of the Form 3115 to the IRS office in Covington, KY, as required by Rev. Proc. 2015-13. This form was submitted within the three-month window provided in section 8.02(1)(a) of Rev. Proc. 2015-13 in order to obtain audit protection. At the time of filing, Taxpayer was under examination for at least 12 months but the method of accounting that Taxpayer was requesting to change was not an issue under consideration. Taxpayer was aware that in order to make the automatic accounting method change, Taxpayer was responsible for attaching the original Form 3115 to its then to-be-filed U.S. federal income tax return for Taxable Year.

Taxpayer's internal tax department prepared and filed its U.S. federal income tax return for Taxable Year. Taxpayer's Tax Manager was responsible for attaching Taxpayer's original Form 3115 to the return. On Date6, Taxpayer timely e-filed its U.S. federal income tax return for Taxable Year. On this return, Taxpayer included all adjustments consistent with the Form 3115. However, Taxpayer's Tax Manager inadvertently failed to attach Taxpayer's original Form 3115 to its U.S. federal income tax return for Taxable Year as required by Rev. Proc. 2015-13.

On Date7, Taxpayer completed a post-filing final review of the internal records and files for its U.S. federal income tax return for Taxable Year and identified that Taxpayer's Form 3115 was not attached to the return. Taxpayer then requested Advisor commence preparation of this request.

#### LAW

Rev. Proc. 2015-13 provides the procedures by which a taxpayer may obtain automatic consent to change certain accounting methods. Section 9 of Rev. Proc. 2015-13 provides that consent of the Commissioner to change its accounting method under section 446(e) of the Code and section 1.446-1(e) of the Income Tax Regulations is granted only if the taxpayer complies with all the applicable provisions of the revenue procedure and implements the change in method on its federal income tax return for the requested year of change to which the original Form 3115 is attached pursuant to section 6.03.

Section 6.03(1)(a)(i) of Rev. Proc. 2015-13 provides that a taxpayer changing an accounting method pursuant to Rev. Proc. 2015-13 must complete and file a Form 3115 in duplicate. The original Form 3115 must be attached to the taxpayer's timely filed (including any extension) original federal income tax return for the year of change, and a copy (with signature) of the Form 3115 must be filed with the appropriate office of the Service no earlier 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 of the Procedure and Administration Regulations provide the standards the Commissioner uses 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 elections that do not meet the requirements of section 301.9100-2.

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, 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.

Section 301.9100-3(a) provides extensions of time to make a regulatory election under Code sections other than those for which section 301.9100-2 expressly permits automatic extensions. 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) 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, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

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)) and the new position requires or permits 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.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief.

### ANALYSIS

Taxpayer's election is a regulatory election, as defined under section 301.9100-1(b), because the due date of the election is prescribed in Rev. Proc. 2015-13. The Commissioner has the authority under sections 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

Taxpayer in this case has represented that it requested relief before the failure to make the regulatory election was discovered by the Service and that it reasonably relied on its internal qualified tax professionals, and the tax professionals failed to make, or advise Taxpayer to make, the election. Thus, under sections 301.9100-3(b)(1)(i) and (v), Taxpayer will be deemed to have acted reasonably and in good faith. Taxpayer has also represented that none of the circumstances listed in section 301.9100-3(b)(3) apply.

Based on the facts of the case Taxpayer provided, granting an extension of time to file the election will not prejudice the interests of the government under section 301.9100-3(c)(1). Taxpayer has represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, Taxpayer has represented that the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

### CONCLUSION

In the present situation, the requirements of sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations have been satisfied. The information and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith. Furthermore, granting an extension will not prejudice the interests of the Government under section 301.9100-3(c)(1). Accordingly, Taxpayer is granted an extension of time until 60 days following the date of this ruling to file an amended return for Taxable Year that includes its original Form 3115 requesting to change its method of

accounting for depreciation under section 168 of the Code.

The rulings contained in this letter are based upon information and representations submitted by the 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 in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling including whether Taxpayer's Form 3115 proposes a permissible method.

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.

A copy of this ruling 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under Section 6110 of the Code.

Sincerely,

Jamie J. Kim  
Senior Technician Reviewer, Branch 3  
(Income Tax & Accounting)

cc: