

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Attn:

Refer Reply To:  
CC:ITA:B02  
PLR-110285-19  
Date:  
October 24, 2019

TY:

**LEGEND:**

- Taxpayer =
- A =
- B =
- C =
- D =
- E =
- F =
- G =
- Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =

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

This responds to a letter ruling request dated \_\_\_\_\_, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100- 3 of the Procedure and Administration Regulations to change its method of accounting under § 446(e) of the Internal Revenue Code, § 1.446-1(e) of the Income Tax Regulations, and the automatic consent procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, for the tax year ending on Date 1.

## FACTS

Taxpayer represents the following:

Taxpayer is a common parent of A, and annually files a consolidated Form 1120, U.S. Corporation Income Tax Return. The wholly owned subsidiaries that are relevant to this request are: B, C, D, E, and F (the "Subsidiaries"). The TY Return included the original executed copy of Form 3115, Application for Change in Accounting Method. The Form 3115 stated that Taxpayer and Subsidiaries had elected to change its method of accounting for certain prepaid expenses under § 1.263(a)-4(f) of the Income Tax Regulations.

On Date 2, Taxpayer purchased all of the issued and outstanding capital stock of G. Early in TY, Taxpayer engaged Firm to prepare Taxpayer's U.S. federal and state income tax returns, and to provide other ad hoc tax advisory services.

On Date 3, Firm advised Taxpayer to change the method of accounting for certain prepaid expenses from capitalizing and amortizing the costs over the period of expected benefit, to deducting the amounts paid in the taxable year in which payment is made in accordance with the 12-month rule under § 1.263(a)-4(f). Taxpayer requested that Firm proceed with computing the necessary § 481(a) adjustment and preparing the TY Return and Form 3115 consistent with the advice received.

Based on Taxpayer's consent, Firm prepared the Form 3115 and TY Return. It was intended by both Firm and Taxpayer that the Form 3115 request an automatic change in accounting method for Taxpayer and subsidiaries and that TY Return reflect that the change was made.

On Date 4, Firm emailed a completed copy of the Form 3115 to Taxpayer and instructed Taxpayer to sign the Form 3115 and return the signed copy to Firm because the Form 3115 and the attached statements needed to be filed with the TY Return and Firm would ultimately associate the Form 3115 with the return. Taxpayer signed the Form 3115 on Date 4. On Date 4, Firm represented that it would file the Form 3115 with the TY Return and separately in duplicate with the IRS.

On Date 5, Taxpayer signed Form 8453-C, U.S. Corporation Income Tax Declaration for an IRS e-file Return, authorizing Firm to electronically file the TY return. The TY Return was timely e-filed by Firm on Date 6 with the Form 3115 attached. However, due to unintentional administrative oversight, Firm failed to send the signed copy of the original Form 3115 to an IRS facility in Covington, Kentucky, no earlier than the first day of the requested year of change and no later than the date the taxpayer filed the original Form 3115 with the federal income tax return for the requested year of change as required under Rev. Proc. 2015-13.

Upon review, the Form 3115 filed with the TY Return failed to include a listing of names and employer identification numbers of the subsidiaries that joined in the application. Further, the Form 3115 did not explain the method of accounting for prepaid expenses used by each member of the consolidated group, and did not separately break-out the § 481(a) adjustment by each applicant. It was both Firm and Taxpayer's intention that the Form 3115 as prepared related to Taxpayer and its subsidiaries. The TY Return was filed consistent with the method change request.

On Date 7, Firm 1 identified the failure to file the copy of the Form 3115 with the IRS in Covington, Kentucky. On Date 8, Firm contacted Taxpayer to alert Taxpayer that the Form 3115 had not been filed with the IRS in Covington, Kentucky. On Date 9, Firm informed Taxpayer of the other deficiencies in the Form 3115.

### LAW

Rev. Proc 2015-13 provides the procedures by which a taxpayer may obtain automatic consent to change certain accounting methods. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner to change its method of accounting under § 446(e) and the regulations thereunder.

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 must be attached to the taxpayer's timely filed (including extensions) 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 Internal Revenue Service no earlier than the first day of the year of change and no later than when the original is filed with the federal 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.

### CONCLUSION

Taxpayer's election is a regulatory election, as defined in section 301.9100-1(b), because the due date of the election is prescribed in Rev. Proc. 2015-13, which was published in the Internal Revenue Bulletin. Based solely on the information provided and representations made, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 60 days from the date of this ruling to file the required original Form 3115 described above for the TY with an amended federal income tax return for that year.

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.

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 discussed or referenced herein in this letter. Specifically, we have no opinion, either expressed or implied, concerning whether the accounting method change Taxpayer has attempted to make is eligible to be made under the automatic procedures of Rev. Proc. 2015-13 and Rev. Proc. 2017-30, 2017-18 I.R.B. 1131. Further, no opinion is expressed or implied regarding the correctness of Taxpayer's method of accounting.

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 on file with this office, a copy of this letter is being sent to your 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.

Sincerely,

David M. Christensen  
Assistant to Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: