

Internal Revenue Service

Number: **202019006**
Release Date: 5/8/2020
Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

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Refer Reply To:
CC:ITA:B06
PLR-100307-20
Date:
February 04, 2020

LEGEND

Taxpayer =

Applicants =

Accounting Firm =

Tax Year =

Dear _____ :

This letter is in reply to a request for a private letter ruling made by Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1(c) and 301.9100-3 of the Procedure and Administration Regulations to file Form 3115, Application For Change in Accounting Method, for Tax Year on behalf of Applicants.

FACTS

Taxpayer is a domestic S corporation which wholly owns Applicants, each a qualified subchapter S subsidiary. Taxpayer files a Form 1120-S, U.S. Income Tax Return for an S Corporation. Taxpayer and Applicants use an accrual method of accounting and have a 52-53-week tax year that ends on the last Saturday in December.

Taxpayer retained the services of Accounting Firm to review Applicants' present methods of accounting under section 263A of the Internal Revenue Code for the Tax Year Federal tax return. Accounting Firm determined that two accounting method changes should be made and that these could be implemented *via* the automatic change procedures set forth in Rev. Proc. 2015-13, 2013-5 I.R.B. 419. Accounting Firm accordingly prepared the two automatic accounting method changes requests for Tax Year. These two changes are:

A change in Applicants' method "to comply with the new definition of Section 471 costs under [section] 1.263A-1(d)(2)" of the Income Tax Regulations.

A change in Applicants' method to "recharacterize certain costs presently treated as additional Section 263A costs as Section 471 costs, as defined by [section] 1.263A-1(d)(2)".

Taxpayer prepared and timely filed its Federal income tax return for Tax Year. Included in this filing, was the original Form 3115 that included both accounting method changes. Also, the accounting method changes were reflected on the Federal income tax return filed for Tax Year. Accounting Firm "represented to" Taxpayer that it would file the duplicate copy of Form 3115 with the appropriate office at the Internal Revenue Service (IRS). However, the required copy of Form 3115 was not filed due to an "internal miscommunication" among Accounting Firm personnel.

Accounting Firm discovered the mistake within days and informed Taxpayer. Shortly thereafter, Taxpayer engaged Accounting Firm to file this request for an extension of time under sections 301.9100-1(c) and 301.9100-3.

RULINGS REQUESTED

Taxpayer requests an extension of time for filing the copy of the original Form 3115, which was attached to Taxpayer's Federal income tax return for Tax Year under sections 301.9100-1(c) and 301.9100-3.

LAW AND ANALYSIS

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a

regulatory election as an election whose due date is prescribed by regulations published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides for automatic extensions of time for making certain elections. Section 301.9100-3 provides for extensions of time for making elections that do not meet the requirements of section 301.9100-2.

The requested accounting method changes are regulatory elections as defined under section 301.9100-1(b) because the due date of the changes are prescribed in section 1.446-1(e) and Section 6.03(3)(a) of Rev. Proc. 2015 -13, 2013-5 I.R.B. 419. Taxpayer's request must be analyzed under the requirements of section 301.9100-3 because the automatic provisions of section 301.9100-2 are not applicable.

Requests for relief under section 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interest of the government. See section 301.9100-3(a).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make a regulatory election is discovered by the IRS; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity of the election; (iv) reasonably relied on written advice of the IRS; 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.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not 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 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 and chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(i) provides, 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). The section also provides that, if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made

Further, 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 be 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 under this section.

CONCLUSION

On the basis of Taxpayer's representations, we conclude that the requirements of sections 301.9100-1(c) and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer to file the copy of Form 3115. This copy must be identical to the original Form 3115 that had been timely filed. This extension shall be for a period of 45 days from the date of this ruling.

Except as expressly set forth above, this office neither expresses nor implies any opinion concerning any tax consequences of the facts described above under any other provision of the Code or regulations. This ruling merely permits Taxpayer to file a copy of Form 3115 late. We have no opinion as to whether any of the accounting method changes discussed in this private letter ruling can be implemented *via* the automatic change procedures set forth in Rev. Proc. 2015-13 or whether the changes should be approved by a director in connection with the examination of Taxpayer's Federal income tax return. We express no opinion as to whether Taxpayer or Applicants are properly accounting for any items of income or expense generated as a result of transactions with any related party, as defined under § 267(b). Furthermore, we have no opinion whether both accounting changes may be implemented on only one Form 3115. If applicable, this relief under sections 301.9100-1(c) and 301.9100-3, is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of Taxpayer if the relief otherwise would change the amount of any section 965 element of any such United States shareholder. See section 1.965-4(c)(1). The ruling contained in this letter is 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 in support of this request for an extension of time to file the required copy of Form 3115, all material is subject to verification on examination.

This ruling is directed only to Taxpayer who requested it. Section 6110(k)(3) 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 each of Taxpayer's authorized representatives.

Sincerely,

Cheryl L. Oseekey
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: