

15.18 of Rev. Proc. 2018-31, 2018-22 I.R.B. 637, as modified by Rev. Proc. 2018-40, 2018-34 I.R.B. 320. However, as a result of an administrative oversight, Taxpayer failed to file the duplicate copy of the Form 3115, as required. See Rev. Proc. 2019-1, 2019-1 I.R.B. 1.

Taxpayer engaged Accounting Firm to prepare and file its Federal income tax return along with the Form 3115 to change to the cash method for Tax Year. Taxpayer, with the assistance of Accounting Firm, electronically filed Taxpayer's Federal income tax return and the original Form 3115 for Tax Year. The accounting method change to the cash method was reflected on the Federal income tax return filed by Taxpayer for Tax Year.

On or about Date, Accounting Firm discovered that the duplicate copy of the Form 3115 had not been filed for Tax Year. Upon discovery of this oversight, Accounting Firm notified Taxpayer and immediately underwent the process to request an extension of time under §§ 301.9100-1(c) and 301.9100-3.

RULING REQUESTED

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

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 in §§ 301.9100-1(c) and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election with a due date 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 § 301.9100-2.

The requested accounting method change is a regulatory election as defined under § 301.9100-1(b) because the due date of the change is prescribed in § 1.446-1(e) of the Income Tax Regulations (Regulations) and section 6.03(1)(a)(i) of Rev. Proc. 2015 -13. Taxpayer's request must be analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

Requests for relief under § 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 § 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 § 6662 of the Internal Revenue Code (Code) 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). Also, 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, § 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 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 § 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 §§ 301.9100-1(c) and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer to file a copy of the Form 3115 with the appropriate IRS office. This extension shall be for a period of 60 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 the Form 3115 late. This copy must be identical to the signed, original Form 3115 filed with Taxpayer's Federal income tax return for Tax Year. We have no opinion as to

whether the accounting method change discussed in this private letter ruling can be implemented through the automatic change procedures in Rev. Proc. 2015-13 or whether the change should be approved by a director in connection with the examination of Taxpayer's Federal income tax return. We express no opinion regarding Taxpayer's accounting method for any specific items of income or expense under the proposed cash method. 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 in support of this request for an extension of time to file the required copy of the 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)

Enclosure:

Copy for § 6110 purposes

cc: