

**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:B06  
PLR-118559-21

Date:  
March 15, 2022

Legend

Taxpayer =

Year =

Activity =

Dear :

This letter ruling responds to a letter, dated August 5, 2021, and the subsequent correspondence submitted by Taxpayer. Taxpayer requested an extension of time, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file the original and signed duplicate copy of a Form 3115, *Application for Change in Accounting Method*. Taxpayer desires to file these two documents so that it may obtain the Commissioner's consent to change its overall accounting method from the cash and disbursements method to an accrual method, for the Year taxable year. We are issuing this letter ruling electronically as permissible under sections 7.02(2) and 9.04(3) of Rev. Proc. 2021-1, 2021-1 I.R.B.1, 33, and 48.

FACTS

Taxpayer is an S corporation that is a full-service production company for Activity. It currently uses an overall accrual method of accounting. In Year, it changed from the cash receipts and disbursements to its current accrual method without filing either of the two Forms 3115 that are required to be filed to obtain the Commissioner's consent to

make this change in accounting method. Section 6.03(1)(a)(i) of Rev. Proc. 2013-15, 2015-51 I.R.B. 419. Taxpayer failed to take into account the adjustment required by § 481(a) of the Internal Revenue Code when it made its accounting method change in Year.

We held the conference of right under section 10.02 of Rev. Proc. 2021 on February 17, 2022. Taxpayer responded with a post-conference submission. After considering the information provided at the conference of right and the post-conference submission, as well as the earlier submitted information, we concluded that an extension of time to file the missing two Forms 3115 could not be granted. We notified Taxpayer's authorized representatives of this conclusion and the representatives requested an adverse letter ruling.

### RULING REQUESTED

Taxpayer is requesting an extension of time, pursuant to §§ 301.9100-1 and 301.9100-3, to file the original and signed duplicate copy of its Form 3115 so as to cure its previous failure to file either of the forms in connection with its method change to an accrual method that it made in Year.

### LAW AND ANALYSIS

Section 1.446-1(e)(3)(i) of the Income Tax Regulations provides that, to secure the Commissioner's consent for a change in method of accounting, a taxpayer generally must file an application on Form 3115, "Application for Change in Accounting Method," during the taxable year in which the taxpayer desires to make the change in method of accounting.

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

Section 6.03(4)(b) of Proc. 2015-13 provides that, except in unusual and compelling circumstances or as provided in section 6.03(4)(a) of Rev. Proc. 2015-13 (the 6-month automatic extension for filing a Form 3115), a taxpayer is not eligible for an extension of time to file a Form 3115.

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

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an 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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for an extension of time subject to § 301.9100-3 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 the granting of the extension will not prejudice the interests of the Government.

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.

If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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 prejudiced by the granting of relief.

Section 301.9100(b)(c)(1)(ii) provides 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 under this section.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. Section 301.9100-3(c)(2)(i) provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which the extension of time is requested is subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner). Section 301.9100-3(c)(2)(ii) provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which the extension of time is requested requires a § 481(a) adjustment (or would require such an adjustment if the taxpayer changed to the method of accounting for which the extension is requested in a taxable year subsequent to the year in which the election should have been made). What are unusual and compelling circumstances must be decided on a case-by-case basis in light of all applicable facts and circumstances. *Id.* at 390.

While the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections, Taxpayer is seeking an extension of time to file the original and signed duplicate copy of its Form 3115 for Year, long after its unauthorized change in method of accounting. Barring unusual and compelling circumstances, Taxpayer is not entitled to an extension of time under § 301.9100-3 because the Government's interests are deemed prejudiced.

## CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has failed to demonstrate that the Government's interests are not prejudiced. Accordingly, no extension of time to file the missing two Forms 3115 for Year is granted.

The ruling contained in this letter is based upon facts and representations submitted by Taxpayer with accompanying penalty of perjury statements executed by appropriate parties.

This letter 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, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely yours,

Christina A. Morrison  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc:

Enclosures (2)

Copy of this letter  
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