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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-117336-22
Date:
January 17, 2023

In Re:

Legend

Taxpayer =

Subsidiary =

Date A =

Date B =

Accounting Firm =

Date C =

Date D =

Date E =

Date F =

Date G =

Agency =

Date H =

Dear _____ :

This letter is in reply to a request for a private letter ruling made by Taxpayer on behalf of Subsidiary. Taxpayer, on behalf of Subsidiary, has requested an extension of time under sections 301.9100-1(c) and 301.9100-3 of the Procedure and Administration Regulations to file the original of a Form 3115, Application For Change in Accounting Method. This Form 3115 should have been filed on or before Date A, without extension.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer is the common parent of an affiliated group of corporations, including Subsidiary, that file a consolidated Federal income tax return. Taxpayer provides investment banking products and services. Taxpayer files its consolidated return on the basis of a calendar year and uses an overall accrual method of accounting for Federal income tax purposes.

Taxpayer acquired Subsidiary on Date B in what Taxpayer has described as a “non-taxable asset reorganization . . . that qualifies (as) a tax-free merger . . . described in I.R.C. § 368(a)(1)(A).” Taxpayer says that “(a)s a result of (this transaction), (Subsidiary)’s tax year ended on Date B, under I.R.C. § 381(b)(1).” .

Subsidiary retained the services of Accounting Firm “to perform a review of its methods of accounting” on Date C. Accounting Firm, Taxpayer, and Subsidiary held consultations and it was decided that Subsidiary would file a Form 3115 to change various methods of accounting under IRC § 263A for its tax year ending on Date B.

Subsidiary’s Form 3115 “included changing (Subsidiary)’s method of determining capitalizable mixed service costs for self-constructed assets from the direct allocation method described in Treas. Reg. § 1.263A-1(g)(4)(iii)(A) to the 90-10 de minimis rule described in Treas. Reg. § 1.263A-1(g)(4)(ii) and the step-allocation method described in Treas. Reg. § 1.263A-1(g)(4)(iii)(B).” Accounting Firm believed these changes could be made using the automatic consent procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419.

It was believed that Subsidiary’s Form 3115 would be due on Date D, with an extended due date of Date E. However, in fact, the Form 3115 was due on Date A, with an extended due date of Date F.

Taxpayer has represented that Subsidiary filed a copy of the Form 3115 with the appropriate office of the Internal Revenue Service (IRS) as required by Rev. Proc.

2015-13 on Date G, before the extended due date of Date F. In addition, Taxpayer has represented that the accounting method changes referenced by the Form 3115 were reflected on both the required financial statements filed with the Agency and the appropriate tax return for Subsidiary. This return was filed on Date H.

When Taxpayer, Subsidiary and Accounting Firm realized that the due date of Subsidiary's Form 3115 had been miscalculated, this request to obtain from the Commissioner an extension of time under sections 301.9100-1(c) and 301.9100-3 to file the Form 3115 late was filed.

RULING REQUESTED

Taxpayer requests an extension of time for filing the required original Form 3115 under sections 301.9100-1(c) and 301.9100-3 to obtain the Commissioner's permission to change Subsidiary's method of determining capitalizable mixed service costs for the tax year ended Date B.

LAW AND ANALYSIS

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 IRC § 446(e) and the Income Tax 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 any 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 IRS no earlier than the first day of the year of change and no later than when the original is filed with the federal income tax return for the year of change.

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.

Requests for relief under section 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (i) that the taxpayer acted reasonably and in good faith and (ii) 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 IRC § 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 tax 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.

Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the tax year in which the regulatory election should have been made, or any tax 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. This section provides, in relevant part, that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances when the accounting method regulatory election for which relief is requested is subject to the procedure described in Treas. Regs. § 1.446-1(e)(3)(i) or the relief requires an adjustment under IRC § 481(a) (or would require an adjustment under IRC § 481(a) if the taxpayer changed to the accounting method for which relief is requested in a taxable year subsequent to the taxable year the election should have been made).

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 original Form 3115 that should have been attached to the tax return that was filed for the short taxable year ending on Date B. No other revision to this return can be made. The Form 3115 must be identical to the copy of the Form 3115 that had been filed previously with the appropriate IRS office. This extension shall be for a period of 45 days from the date of this letter ruling.

Except as expressly set forth above, we neither express nor imply any opinion concerning the tax consequences of the facts described above under any other provision of the Code or regulations. Specifically, we have no opinion, either expressed or implied, concerning whether the accounting method changes that Subsidiary has changed are eligible to be made under the automatic consent procedures of Rev. Proc. 2015-13. Further, no opinion is expressed regarding the correctness of Subsidiary's proposed IRC § 263A accounting methods. Further, we have no opinion whether Taxpayer's acquisition of Subsidiary qualifies as a transaction described by IRC § 381. Lastly, no opinion is expressed regarding the filing of any consolidated Federal income tax return by Taxpayer.

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 Form 3115, all material is subject to verification on examination.

This ruling is directed only to Taxpayer and Subsidiary. IRC § 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: