

SECTION 1. PURPOSE

This revenue procedure revises the standards the Commissioner of Internal Revenue Service will use to determine whether the Commissioner will grant an extension of time to make an election when the due date of the election is fixed by regulation or certain other published guidance pursuant to section 301.9100-1 of the Procedure and Administration Regulations. In addition, this revenue procedure provides relief for elections when a statute provides that the election must be made by the due date of the return or the due date of the return including extensions for filing the return that are authorized by section 6081(a) of the Internal Revenue Code.

The purpose of this revenue procedure is to provide relief to taxpayers who reasonably and in good faith fail to make a timely election when granting relief will not prejudice the interests of the government. This revenue procedure provides a means by which taxpayers can be in the same position they would have been in had they made their elections in a timely fashion.

SEC. 2. BACKGROUND

Section 301.9100-1 of the regulations sets forth rules regarding extensions of time for making elections or applications for relief. Upon good cause shown, the Commissioner has discretion to grant a reasonable extension of time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin, for making an election or an application for relief in respect of tax under the Internal Revenue Code, except under subtitles E, G, H, and I, provided that granting the extension will not jeopardize the interests of the government.

Section 6081 of the Code provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement or other document required by title 26 for a period of no more than 6 months (except when the taxpayer is abroad).

SEC. 3. SCOPE

.01 This revenue procedure applies to extensions of time for making certain elections or applications for relief when the deadline for the election or application is fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin, in accordance with section 301.9100-1(a) of the regulations. In addition, this revenue procedure applies to extensions of time when a statute provides that an election be made by the due date of the taxpayer's return or the due date of the taxpayer's return including extensions.

Furthermore, this revenue procedure applies to extensions for elections to use or requests to change an accounting method or an accounting period to the extent such elections are included in Appendix A, Appendix B, or have a due date prescribed by

statute as the due date of the return or the due date of the return including extensions. Unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in an adopted method of accounting, whether the change is from a permissible or impermissible method. See generally, Rev. Rul. 90-38, 1990-1 C.B. 57. The Commissioner's specific authorization and consent for retroactive adoption or change is given, however, with respect to the methods of accounting listed in the appendices to this revenue procedure.

Section 4 of this revenue procedure contains two automatic extensions: (1) an automatic 12-month extension for certain elections whose deadlines are prescribed by regulation or other administrative pronouncement, and (2) an automatic 6-month extension for elections when the Code provides that the election be made by the due date of the return or the due date of the return including extensions. Section 5 applies to elections (other than accounting method and period changes and elections) whose deadlines are prescribed by regulation or other administrative pronouncement if these elections do not qualify for relief under section 4. In addition, section 5 applies to elections described in Appendix B if these elections do not qualify for relief under section 4.

.02 This revenue procedure does not apply either to elections for which there is a special transitional rule in section 301.9100-1(b) of the regulations or to elections excepted from section 301.9100-1(a) by section 301.9100-1(c).

.03 For purposes of this revenue procedure, the term "taxpayer" has the same meaning as the term "person" defined in section 7701(a)(1) of the Code (rather than the meaning of the term taxpayer defined in section 7701(a)(14)).

SEC. 4. AUTOMATIC EXTENSIONS

.01 Automatic 12-month extension for certain elections whose deadlines are prescribed by regulation or other administrative pronouncement. An automatic 12-month extension is granted to make elections described in Appendix A (or in subsequent revenue procedures) provided the taxpayer takes corrective action within 12 months of the deadline for making the election. The extension runs from the original due date of the election.

Corrective action required for this automatic extension is (1) filing an original or an amended return to attach the appropriate form for making the election, or (2) for those elections not required to be filed with a return, taking the steps required to file the election in accordance with the regulation or other administrative pronouncement. Taxpayers who elect under this automatic extension (and all taxpayers whose tax liability would be affected by the election) must report their income (in the original or an amended return) in a manner that is consistent with the election for the year the election should have been made and for each subsequent year. The Service may invalidate an election if the taxpayer fails to report income consistent with the election in all affected years.

.02 Automatic 6-month extension for certain elections when the Code prescribes that the election be made by the due date of the return or the due date of the return including

extensions. An automatic extension of 6 months from the due date of a return (excluding extensions) is granted to make elections whose due dates are prescribed by statute as the due date of the return or the due date of the return including extensions in the case of a taxpayer that timely files the return and takes corrective action within 6 months of the due date of the return (excluding extensions). This extension does not apply where the statute provides that the election be made by the due date of the return excluding extensions.

Corrective action required for this automatic extension is amending the filed return in the manner required to perfect the election. Taxpayers who elect under this automatic extension (and all taxpayers whose tax liability would be affected by the election) must report their income (in the original or an amended return) in a manner that is consistent with the election for the year the election should have been made and for each subsequent year. The Service may invalidate an election if the taxpayer fails to report income consistent with the election in all affected years.

.03 Procedural Requirements. Any return, statement of election, or other form of filing that must be made to obtain an automatic extension must provide the following statement at the top of the document: "FILED PURSUANT TO REV. PROC. 92-85". Any filing made pursuant to this section should be sent to the same address that the filing to make the election would have been sent had the filing been timely made. No request for a private letter ruling is required to obtain the extension. Accordingly, user fees do not apply to taxpayers taking corrective action under this section.

For situations outside of the scope of this section, see section 5.

SEC. 5. OTHER EXTENSIONS

Requests for extensions of time for elections (other than accounting method and period changes and elections) whose deadlines are prescribed by regulation or other administrative pronouncement that do not meet the requirements of section 4 above must be made under the rules of this section. In addition, this section applies to elections to use or requests to change an accounting method or accounting period that are listed in Appendix B (or in successor revenue procedures). Applications for relief that fall under this section will be granted when the taxpayer provides the evidence (including affidavits described in section 7) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

.01 Reasonable Action and Good Faith.

(1) Subject to sections 5.01(4) and (5), when a taxpayer applies for relief under this section before the failure to make the election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith.

(2) Subject to sections 5.01(4) and (5), a taxpayer that failed to make the election (which is discovered by the Service) will have acted reasonably and in good faith for purposes of this section if--

(a) the taxpayer inadvertently failed to make the election because of certain intervening events beyond the taxpayer's control or, because after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity of the election;

(b) the taxpayer reasonably relied on the written advice of the Service; or

(c) the taxpayer 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.

(3) For purposes of section 5.01(2), a taxpayer will not be considered to have reasonably relied upon a tax professional if--

(a) the taxpayer knew or should have known the tax professional was not competent to render advice on the election; or

(b) the taxpayer knew or should have known the tax professional was not aware of all relevant facts.

(4) A taxpayer will not be considered to have acted reasonably and in good faith for purposes of this section 5 if--

(a) the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code and the new position requires or permits an election for which relief is requested; or

(b) the taxpayer was fully informed of the required election and related tax consequences and chose not to file the election.

(5) A taxpayer will not be considered to have acted reasonably and in good faith for purposes of this section 5 if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the original due date of the election that make an election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

.02 Prejudice to the Interests of the Government.

(1) The interests of the government are prejudiced if granting relief under this revenue procedure would result in a taxpayer having a lower tax liability in the aggregate for all years to which the election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, 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.

(2) Ordinarily, the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations. The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to section 6.04) certifying that the requirements of section 5.02(1) are satisfied.

SEC. 6. PROCEDURAL REQUIREMENTS FOR REQUESTS UNDER SECTION 5

Requests for relief under section 5 of this revenue procedure must provide evidence which establishes the requirements set forth in sections 5.01 and 5.02 above, and must provide additional information as required by this section.

.01 The taxpayer must state when the applicable return, form, or document used to make the election or application for relief was required to be filed and when it was actually filed.

.02 The taxpayer must submit a copy of any documents relating to the taxpayer and referring to the election or application for relief.

.03 When requested, the taxpayer must submit a copy of the taxpayer's income tax return for the taxable year for which the taxpayer requests an extension or application for relief and any subsequent return affected by the election.

.04 When applicable, the taxpayer must submit a copy of the income tax returns of other taxpayers affected by the election.

.05 The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid election or application for relief and to the discovery of the failure. When the taxpayer relied on a tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional.

The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete." The individual who signs for a corporation must be an officer of the corporation and have personal knowledge of the facts and circumstances at issue. The individual who signs for a partnership must be a general partner with personal knowledge of the facts and circumstances at issue.

.06 The taxpayer must submit a detailed affidavit from the individuals having knowledge or information about the events that led to the failure to make a valid election or application for relief and to the discovery of the failure. These individuals must include:

(1) the taxpayer's income tax return preparer and any other individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return; and

(2) any other accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election.

Any affidavit from such a tax professional must describe the engagement and responsibilities of the professional as well as the advice that the professional provided to the taxpayer.

Each such affidavit must include the name, current address, and taxpayer identification number of the affiant, and be accompanied by a dated declaration, signed by the affiant, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete."

.07 Requests for relief under this revenue procedure that are under the jurisdiction of the Associate Chief Counsel (Domestic) or the Associate Chief Counsel (Employee Benefits and Exempt Organizations) should be submitted in accordance with Rev. Proc. 92-1, 1992-1 I.R.B. 9, or its successors. Requests should be sent to either the Associate Chief Counsel (Domestic) or the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service, Attention CC:CORP:T, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

.08 Requests for relief under this revenue procedure that are under the jurisdiction of the Associate Chief Counsel (International) should be submitted in accordance with Rev. Proc. 92-7, 1992-1 I.R.B. 135, or its successors. Requests should be sent to Associate Chief Counsel (International), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington D.C. 20044.

.09 Requests for relief under this revenue procedure that are under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) should be submitted in accordance with Rev. Proc. 92-4, 1992-1 I.R.B. 66, or its successors, or if made in connection with an application for exemption from federal income tax, in accordance with Form 1023, Application for Recognition of Exemption. In the case of employee plans rulings, requests should be sent to Employee Plans Rulings, Internal Revenue Service, Assistant Commissioner (EP/EO) , Attention E:EP:R, P.O. Box 14073, Ben Franklin Station, Washington, D.C. 20044. In the case of exempt organizations rulings , requests should be sent to Exempt Organizations Rulings, Internal Revenue Service, Assistant Commissioner (EP/EO), Attention E:EO, P.O. Box 120, Ben Franklin Station, Washington, D.C. 20044.

.10 Requests for relief submitted under section 6 must be accompanied by the applicable user fee.

SEC. 7. EXAMPLES

.01 Taxpayer error. Taxpayer prepares Taxpayer's own 1992 return. Taxpayer is unaware that an election subject to this revenue procedure is necessary in order for Taxpayer to report Taxpayer's income on the 1992 return in a particular manner. Nevertheless, Taxpayer reports this income in a manner that is consistent with having made this election. In 1995, Taxpayer hires an accountant to prepare Taxpayer's 1994 return. The accountant discovers that the election for 1992 has not been filed. Taxpayer promptly makes a request for relief in accordance with this revenue procedure. Taxpayer is not using hindsight in making this request. Furthermore, if Taxpayer were granted an extension of time to make the election, Taxpayer would pay no less tax than if the election had been timely made. Absent other factors, relief would be granted to Taxpayer.

.02 Reliance on professional. Taxpayer hires a tax attorney to advise Taxpayer on preparing Taxpayer's 1992 income tax return and provides the attorney with all information requested. The tax attorney misinforms the taxpayer with respect to an election subject to this revenue procedure. Taxpayer reasonably relies on the tax attorney for advice concerning the election. In 1995, during the examination of the 1992 return by the Service, the examining agent discovers that the election has not been filed. If Taxpayer were granted an extension of time to make the election, Taxpayer would pay no less tax than if the election had been timely made. Taxpayer promptly makes a request for relief in accordance with this revenue procedure, including attaching an affidavit from Taxpayer's tax attorney stating that the tax attorney failed to advise Taxpayer that the election was necessary. Absent other factors, relief would be granted to Taxpayer under this revenue procedure.

.03 Automatic 6-month extension. Taxpayer, a corporation, has a tax department employing both accountants and attorneys. In 1993, one of Taxpayer's staff tax attorneys, unaware of a certain election available to Taxpayer, fails to make an election when the 1992 tax return was filed on March 15, 1993, the due date of the return. This election does not affect the tax liability of any other taxpayer. The statute requires that this election be made by attaching the appropriate form to the Taxpayer's return. Taxpayer may make the election by filing an amended return by September 15, 1993 (6 months from the March 15, 1993 due date) in accordance with section 4.03 of this revenue procedure.

SEC. 8. EFFECT OF AMENDED RETURNS FILED UNDER THIS REVENUE PROCEDURE

.01 Taxpayers requesting and receiving an extension of time under this revenue procedure waive any objections to a second examination under section 7605(b) of the Code. Any second examination is limited to the issue(s) that is the subject of the submission and any correlative adjustments.

.02 When relief is granted under section 6 of this revenue procedure, the Service may require the taxpayer to consent to an extension of time to assess all taxes under section 6501(c)(4) of the Code.

SEC. 9. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 79-63, 1979-2 C.B. 578, which sets forth the information and representations that must be furnished by the taxpayer and the factors that will be considered by the Service in determining whether an extension will be granted for an election or application for relief pursuant to former section 1.9100-1 of the regulations, is superseded.

Rev. Proc. 92-20, 1992-12 I.R.B. 10, is modified by deleting all references to Rev. Proc. 79-63 and replacing them with references to this revenue procedure. Thus, the provisions of this revenue procedure apply for applications received within 90 days after the time required for filing Form 3115.

Rev. Proc. 87-32, 1987-2 C.B. 396, is modified by deleting all reference to Rev. Proc. 79-63 and replacing it with references to this revenue procedure. Thus, the provisions of this revenue procedure apply for applications received within 90 days after the time required for filing Form 1128.

SEC. 10. EFFECTIVE DATE

Section 4 of this revenue procedure, concerning automatic extensions, is effective for elections whose due dates (excluding extensions) fall on or after October 1, 1992. Section 5 of this revenue procedure is effective for all applications for relief now being considered by the Service and for all applications for relief submitted on or after October 1, 1992.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Barbara B. Walker of the office of the Assistant Chief Counsel (Income Tax and Accounting) and Elissa J. Shendalman of the office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding the applicability of this revenue procedure to accounting method and accounting period elections, contact Robert Testoff of the office of the Assistant Chief Counsel (Income Tax and Accounting) at (202) 622-4840 (not a toll free-call). For further information regarding the applicability of this revenue procedure to other elections, contact Elissa Shendalman at (202) 622-3040 (not a toll free-call).

[APPENDIX A and APPENDIX B are not included in this document]