



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Henry E. Brown, Jr.  
Member: U.S. House of Representatives  
5900 Core Avenue, Suite 401  
North Charleston, SC 29406

Attention:

Dear Congressman Brown:

I am responding to your letter dated March 23, 2010, on behalf of your constituent, \_\_\_\_\_ of \_\_\_\_\_ represents the estate of \_\_\_\_\_. He wrote about obtaining the Commissioner's permission to change \_\_\_\_\_ accounting method to an accrual accounting method beginning with the 2005 calendar tax year.

The accompanying information indicates that \_\_\_\_\_ pension payments stopped in 2005 when he apparently failed to timely complete a required questionnaire. His failure to complete this questionnaire was apparently due to his incapacitation with Alzheimer's disease. \_\_\_\_\_, \_\_\_\_\_ niece, discovered that \_\_\_\_\_ pension payments had stopped after she acquired conservancy over his affairs. After several inquiries, \_\_\_\_\_ received a lump sum payment of \$ \_\_\_\_\_ in 2007. That \$ \_\_\_\_\_ lump sum payment represented \_\_\_\_\_ pension payments for 2005-2007. In 2008, \_\_\_\_\_ died.

In settling \_\_\_\_\_ affairs, \_\_\_\_\_ filed federal income tax returns for all years through 2004 on \_\_\_\_\_ behalf. Once the Commissioner decides whether \_\_\_\_\_ can change to an accrual accounting method for the 2005 calendar tax year, \_\_\_\_\_ will file returns for tax years 2005-2008.

The rules under section 446 of the Internal Revenue Code on accounting method changes generally require the taxpayer seeking to change his or her accounting method to timely file a Form 3115. When a taxpayer fails to file Form 3115 timely, he or she can

seek the Commissioner's permission for an extension of time to file Form 3115. The standards the Commissioner will use to consider the request are in section 301.9100-1 of the Procedure and Administration Regulations. These standards are that the taxpayer acted reasonably and in good faith, and that the granting of an extension of time to file a Form 3115 will not prejudice the interest of the Government. A taxpayer's late filing of Form 3115 is presumed to prejudice the Government's interests, and the taxpayer needs to show "unusual and compelling circumstances" to overcome this presumption.

In a letter dated January 22, 2010, to the Taxpayer Advocate Office (TAS) in \_\_\_\_\_, accountant, \_\_\_\_\_, argued that unusual and compelling circumstances exist in this case to justify the Commissioner's approval for an extension of time to file the Form 3115. The \_\_\_\_\_ TAS office responded to \_\_\_\_\_ representatives in a letter dated March 5, 2010, stating that in its opinion, \_\_\_\_\_ failed to prove unusual and compelling circumstances. Satisfying the unusual and compelling circumstances standard and thus, proving that the Government's interests are not prejudice by a taxpayer's late filing of a Form 3115 is generally difficult for a taxpayer to achieve. The IRS's Office of Chief Counsel, which reviews late Forms 3115 on behalf of the Commissioner, examines each case on the facts submitted to determine whether the unusual and compelling circumstances standard is met.

In this particular case, however, even if the Office of Chief Counsel agrees that unusual and compelling circumstances exist to justify the Commissioner's approval, the Commissioner would still need to decide whether to allow \_\_\_\_\_ to change to an accrual accounting method. The standard used in considering whether to approve a change to an accrual accounting method is whether the accrual method clearly reflects income. Again, the Office of Chief Counsel, on behalf of the Commissioner, examines each case to determine whether the accounting method that a taxpayer wants to use clearly reflects that taxpayer's income.

Based on the information supplied, even if the Commissioner approved the requested change in accounting method, it would not allocate the \$ \_\_\_\_\_ lump sum payment to the 2005-2007 tax years, which is the result \_\_\_\_\_ representatives seem to desire. Using an accrual accounting method may result in including the \$ \_\_\_\_\_ payment in \_\_\_\_\_ income for 2007, which is the same result when using the cash method. Thus, the "unfair tax burden in 2007" \_\_\_\_\_ identified in his January 22 letter will not diminish even if the Commissioner permits the use of an accrual accounting method beginning with the 2005 calendar tax year.

\_\_\_\_\_ representatives may want to investigate whether they might lessen tax burden in 2007 by taking advantage of the 1986 grandfathering provision of section 402 of the Code. This provision limits the tax on lump sum payments received by individuals who attained age 50 before January 1, 1986. \_\_\_\_\_ representatives can contact the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities) at (202) 622-6000 for further assistance with this provision of the law. As a final alternative, \_\_\_\_\_ representatives can

pursue payment arrangements with the local IRS Taxpayer Assistance Center in

Under the Freedom of Information Act, we will make this letter available to the public after we delete names, addresses, and other identifying information.

I hope this information is helpful. If you have any questions, please contact me at

Sincerely,

Roy Hirschhorn  
Chief, Branch 6  
(Income Tax & Accounting)