



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 May 3, 2010, on behalf of your constituent, _____ of _____. On April 20, 2010, we responded to your office about _____'s request for the IRS Commissioner's permission to use an accrual accounting method beginning with the _____ calendar tax year to prepare returns of the late _____ (decedent). _____ wrote that he did not believe that we looked at the circumstances surrounding this case or that we understood the law and accounting method he requested. We have thoroughly reviewed circumstances, and I hope the following information on the underlying law and requested accounting method is helpful.

_____ specifically asked that the Commissioner allow the decedent to use an accrual accounting method beginning with _____. The Commissioner, in almost all circumstances, will not allow a change to an accrual accounting method because the accrual method ordinarily fails to reflect clearly the income of an individual. We believe that a change to an accrual method, even if granted, would not achieve the desired result as whether that method would allow _____ to include the pension payment that the _____ should have paid to the decedent in _____, _____ and part of _____, in the decedent's income for _____ is questionable. _____ said that these payments accrued to the decedent in each of those respective three years. As indicated in our April 20 letter, we are not certain that the decedent's gross income for _____ would under the accrual method include these pension payments.

If _____ wishes to pursue his attempt to obtain the Commissioner's permission for the decedent to use an accrual accounting method beginning with the _____, he can do so by following the established procedures for obtaining the Commissioner's consideration. These procedures are set forth in Revenue Procedure 2010-1.

_____ must first obtain the Commissioner's permission for an extension of time under section 301.9100-3 to have the decedent's Form 3115 deemed timely. To seek this permission, _____ must request a letter ruling using the procedures of Rev. Proc. 2010-1. The letter ruling request should include:

- A complete statement of facts and other information
- Copies of any relevant instruments or other documents
- An analysis of material facts
- A statement on whether the same issue is in an earlier return
- A statement on whether we previously ruled on the same or similar issue
- A statement on whether a request involving the same or similar issue was previously submitted, being submitted, or is currently pending
- A statement of authorities supporting and opposing the taxpayer's views
- A statement of information for deletion from public inspection
- A penalties of perjury statement

He must also send the appropriate user fee with his letter ruling request.

We do not wish to mislead _____. While _____ can request the Commissioner's permission for an extension of time to file Form 3115, the Commissioner rarely grants permission. _____, on the decedent's behalf, must satisfy the standards of section 301.9100-3, including reasonable action, good faith, and no prejudice of the Government's interests. To show that the Government's interests are not prejudiced, _____, on the decedent's behalf, must show unusual and compelling circumstances. _____ has clearly indicated that in his opinion, the fact that the decedent and his caretaker both suffered from Alzheimer's disease are sufficiently unusual and compelling. However, as stated in our April 20 letter, showing unusual and compelling circumstances is difficult to demonstrate.

Even if _____ does receive permission for an extension of time, the Commissioner must still decide whether to allow the decedent to change to an accrual accounting method. _____ can find the procedures for requesting the Commissioner's permission to change the decedent's method in Rev. Proc. 2010-1. As I stated previously, the Commissioner rarely permits an individual to use an accrual accounting method.

_____ may wish to contact the National Taxpayer Advocate at (202) 622-7852 to discuss payment arrangements. Or, as we indicated in our April 20 letter, _____ 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)