

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201030023**
Release Date: 7/30/2010

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 9100.10-01

, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-152413-09
Date:
April 22, 2010

Legend

Taxpayer =

Date A =

Date B =

Date C =

F =

Year 1 =

Year 2 =

N =

Dear :

This ruling responds to a letter dated October 8, 2009, submitted on behalf of Taxpayer, requesting the Internal Revenue Service (IRS) to grant an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file its original Form 3115, Application for Change in Accounting Method, for the taxable year ending Date A (year of change). The facts as represented by Taxpayer are as follows:

FACTS

Taxpayer is a calendar-year corporation that files its Federal income tax returns as a real estate investment trust ("REIT"). Taxpayer's overall method of accounting is an accrual method.

For the taxable year ending Date A, Taxpayer timely filed a duplicate of its original Form 3115 with the IRS national office as required by section 6.02(3)(a) of Rev. Proc. 2008-52, 2008-2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009-39, 2009-38 I.R.B. 371, to change its misclassification of depreciable assets placed in service during its taxable years Year 1 through Year 2. However, Taxpayer did not timely file its Federal income tax return for the taxable year ending Date A. Thus, the original Form 3115 that accompanied the return was not attached to a timely filed Federal income return as required by section 6.02(3)(a) of Rev. Proc. 2008-52.

For the taxable year ending Date A, Taxpayer had obtained an extension until Date C to file its Federal income return. Taxpayer completed reviewing and signing its return for the taxable year ending Date A on the evening of Date C. Upon completing and signing the return, Taxpayer's Tax Manager hand carried the return to the E post office. When Taxpayer checked the U.S. Postal Service's website on the morning of Date C, the website reflected that the post office at E closed at N. However, upon arrival at the E post office well before N, the Tax Manager discovered that the E post office was closed. Further, no other post office was open. As a consequence, Taxpayer's return was mailed the next day and was untimely filed. The U.S. Postal Service later informed Taxpayer that the E post office changed its hours to close before N as of Date B, but had not updated its website to reflect this change by Date C.

LAW AND ANALYSIS

Section 446(e) of the Internal Revenue Code and § 1.446-1(e)(2)(i) of the Income Tax Regulations require a taxpayer to obtain the consent of the Commissioner before changing a method of accounting for Federal income tax purposes. To obtain the Commissioner's consent, § 1.446-1(e)(3)(i) generally requires a taxpayer to timely file a Form 3115. Rev. Proc. 2008-52 provides procedures by which a taxpayer may obtain the automatic consent of the Commissioner for specified changes in methods of accounting under § 446(e).

Section 6.02(3)(a) of Rev. Proc. 2008-52 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2008-52 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including extensions) original Federal income tax return for the year of change, and a signed copy of the Form 3115 must be filed with the IRS national office 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.

Under § 301.9100-1(c), 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 a regulatory election.

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 relief 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 the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that, except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the 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 (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the 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.

However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith.

Section 301.9100-3(c)(1) provides in pertinent part 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 granting the relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when 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.

Further, 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under 301.9100-3. Section 301.9100-3(c)(1)(ii).

Section 301-9100-3(c)(2) provides special rules for accounting method regulatory elections. This section provides, in relevant part, that the interests of the Government are deemed to be prejudiced by granting an extension of time except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested is subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner) or if the accounting method regulatory election for which relief is requested requires an adjustment under § 481(a).

RULING

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, an extension of time is hereby granted Taxpayer to file a Form 3115, requesting permission to change its method of accounting for depreciation for Federal income tax purposes, effective for the taxable year ending Date A. The Form 3115 that was filed previously by Taxpayer will thus now be considered by the IRS. A copy of this letter should be associated with the Form 3115 that accompanied Taxpayer's Federal income return filed for the taxable year ending Date A.

Except as specifically set forth above, we express no opinion concerning the tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied regarding (a) whether Taxpayer qualifies as a REIT under the Code, or (b) whether Taxpayer's proposed classification of each item of depreciable property that is the subject of Taxpayer's Form 3115 is proper under Rev. Proc. 87-56, 1987-2 C.B. 647. Further, this ruling letter does not grant an extension of time for filing Taxpayer's Federal income return for the taxable year ending Date A.

The ruling contained in this letter is based upon representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an officer of Taxpayer. These representations are subject to review by the appropriate director in connection with the examination of Taxpayer's Federal tax returns.

This private letter ruling is directed only to Taxpayer. 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 Industry Director, LMSB.

Sincerely,

Willie E. Armstrong, Jr.

WILLIE E. ARMSTRONG, JR.
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes