



understanding that it would file the duplicate copy with the IRS national office. The accounting firm received the duplicate copy on Date 5, which precluded the accounting firm from filing the duplicate copy with the IRS national office on or before the date of Taxpayer's timely filed tax return. Immediately upon learning of the possibility of obtaining an extension of time to file the signed copy of the Form 3115, Taxpayer authorized the accounting firm to file this request for relief under section 9100 of the Internal Revenue Code.

#### APPLICABLE LAW

Rev. Proc. 2008-52 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the application provisions of this revenue procedure has obtained the consent of the Commissioner to change the taxpayer's method of accounting under § 446(e) and the regulations thereunder.

Section 6.02(3)(a) of Rev. Proc. 2008-52 provides that a taxpayer changing a method of accounting pursuant to this revenue procedure must complete and file an application in duplicate. The original must be attached to the taxpayer's timely filed (including any extension) original federal income tax return for the year of change, and a copy (with signature) of the application must be filed with the 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.

Section 301.9100-1(c) provides that 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 certain regulatory elections. Section 301.9100-1(b) provides that an election includes a request to adopt, change, or retain an accounting method, and defines a regulatory election as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of timing 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.

Request for relief under § 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 that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

Section 301.9100-3(b)(1) provides that 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 Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising due 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 Service; 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 will not be considered to have acted reasonably and in good faith if the taxpayer –

(i) seeks to alter a return position for which an accuracy-related penalty had been or could be imposed under § 6662 when the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;

(ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by granting the relief. Under paragraph (c)(1)(i), 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 taxable years affected by the election than the taxpayer would have had if the election had been timely made. Under paragraph (c)(1)(ii), the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## CONCLUSION

Based solely on the facts and representations submitted, including affidavits, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied.

The information provided and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith with this request. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 when relief was requested. Taxpayer represented that granting an extension of time to file the signed duplicate copy of Form 3115 with the IRS national office will not result in a lower tax liability for all taxable years affected by the election than Taxpayer would have had if the duplicate copy of Form 3115 had been timely filed. The taxable years in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made are not closed by the period of assessment. Finally, granting an extension will not prejudice the interests of the Government.

Accordingly, an extension of time is hereby granted for Taxpayer to file the necessary signed copy of the Form 3115 with the IRS national office. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 3115 when it is filed.

This ruling is directed only to the taxpayer requesting it. Section 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 your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office had not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

THOMAS D. MOFFITT  
Chief, Branch 2  
(Income Tax & Accounting)