



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

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear \_\_\_\_\_ :

This letter responds to your request for information dated November 29, 2010, sent on behalf of \_\_\_\_\_ (taxpayer). In your request, you asked for information regarding the status of an application submitted by the taxpayer to make an election under § 455 of the Internal Revenue Code and the Income Tax Regulations thereunder, for the taxpayer's taxable year ending December 31, 2010.

Based on the information you provided, the taxpayer's request to elect § 455 was made in a letter dated February 22, 2010. The letter was mailed to the Commissioner at 1111 Constitution Ave., N. W., Washington, D.C. 20224. The application was received by the Internal Revenue Service on March 9, 2010, and the taxpayer has never received a response to the election request. You ask that if taxpayer's election request was deficient or not correctly prepared, information be provided so that the taxpayer's Form 1120 for the taxable year 2010 can be prepared correctly.

Section 455 provides an election to defer prepayments on subscriptions to newspapers, magazines, or other periodicals. Taxpayers that use an accrual method to account for subscription income are eligible to make the election. If an election is made, income subject to the deferral is included ratably over the period of the subscriptions. The election applies to all prepaid subscription income relating to a trade or business except that taxpayers may opt to either include or defer income relating to liabilities that will end within 12 months of the date of receipt. Taxpayers may make the election by a statement attached to their timely filed return for the first year in which they receive prepaid subscription income in the trade or business. Otherwise, an election requires the IRS's consent pursuant to § 455(c)(3) and §1.455-6(b).

Rev. Proc. 2008-52, 2008-2 C.B. 587, provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting described in its Appendix. Rev. Proc. 2008-52 is the exclusive procedure for a taxpayer within its scope to obtain the Commissioner's consent to a change in method of accounting described in its Appendix. Section 6.01 of Rev. Proc. 2008-52 provides that consent of the Commissioner is granted to any taxpayer within the scope of that revenue procedure to change its method of accounting as described in the Appendix, to the extent the taxpayer complies with all the applicable provisions of the revenue procedure and implements the change in method of accounting for the requested year of change.

Under section 6.02 of Rev. Proc. 2008-52, a taxpayer applies for consent to change a method of accounting pursuant to that revenue procedure by filing a Form 3115 or, where applicable, a statement in lieu of a Form 3115. Section 6.02(3) of Rev. Proc. 2008-52 requires that the taxpayer attach the original application for the change in method of accounting to its timely filed (including extensions) 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.

Section 6.02(7) of Rev. Proc. 2008-52 sets forth where the copy of the application should be filed. Section 6.02(8) of Rev. Proc. 2008-52 provides that, except for limited circumstances, the Service does not send an acknowledgement of the receipt of an application (original or copy) filed under the revenue procedure.

Section 17 of the Appendix to Rev. Proc. 2008-52 describes a change in method in accounting regarding prepaid subscription income to which the automatic consent provisions to Rev. Proc. 2008-52 apply. Specially, section 17 of the Appendix to Rev. Proc. 2008-52 describes a change by an accrual method taxpayer that wants to change its method of accounting for prepaid subscription income to the method described in § 455 and the regulations thereunder. As to the manner of making the change in method, section 17.01(2) of the Appendix to Rev. Proc. 2008-52 provides that the requirement to file a Form 3115 is waived and a statement in lieu of the Form 3115 is authorized for this change. Further, the statement must provide the information required by section 17.01(2)(b)(i)–(v) of the Appendix to Rev. Proc. 2008-52. Section 17.01(2)(c) of the Appendix to Rev. Proc. 2008-52 provides that the consent granted under Rev. Proc. 2008-52 satisfies the consent required under § 455(c)(3) and §1.455-6(b).

Based on the information you provided, taxpayer did not properly elect § 455 for its taxable year ending December 31, 2010. Additionally, we have been unable to locate any IRS records reflecting that the taxpayer made a proper § 455 election for its taxable year ending December 31, 2010. Nevertheless, the taxpayer still has time to make a timely § 455 election for its taxable year ending December 31, 2010.

The taxpayer is not seeking § 455 treatment for the first year in which it received prepaid subscription income in its trade or business. Rather, the taxpayer is seeking to change its accounting of prepaid subscriptions income from the accrual method to the method provided under § 455. This is a change in method of accounting to which Rev. Proc. 2008-52 applies. Therefore, the taxpayer must comply with the requirements of Rev. Proc. 2008-52 in order to change its method of accounting for prepaid subscription income to the accounting method provided under § 455 and the regulations thereunder.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2011-1, §2.04, 2011-1 IRB 7 (Jan. 3, 2011). If you have any additional questions, please contact \_\_\_\_\_ of our office at \_\_\_\_\_.

Sincerely,

Willie E. Armstrong, Jr.  
Senior Technician Reviewer  
Branch 7  
Office of Associate Chief Counsel  
(Income Tax & Accounting)