

Internal Revenue Service

Department of the Treasury
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Legend

- Taxpayer =
- Tax Advisor =
- Costs =
- Date A =
- Date B =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =

Dear :

This ruling is in reply to a request submitted by Taxpayer for an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations, and Rev. Proc. 2011-1, 2011-1 I.R.B. 1, to submit a late Form 3115, Application for Change in Accounting Method, requesting permission to change its method of accounting for Costs.

FACTS

Taxpayer files consolidated federal income tax returns based on a 52-53 week taxable year.

In Year 1, Congress enacted a temporary provision, the benefits of which were available by election only for taxable years ending after December 31, Year 1, and beginning before January 1, Year 4.

Taxpayer intended to make this election and separately request permission to change its method of accounting for Costs for the same taxable year in order to maximize the tax benefit available under the election. The change in method of accounting requires a § 481(a) adjustment.

While preparing Taxpayer's Year 3 tax return, Taxpayer's in-house tax advisors and Taxpayer's Tax Advisor concluded that Taxpayer could legally make the election on Taxpayer's Year 4 tax return. Taxpayer's in-house tax advisors and Tax Advisor reasoned that, because Taxpayer's Year 4 taxable year began on Date A, Year 3, the Year 4 taxable year was within the effective date prescribed by Congress. Soon thereafter, Taxpayer filed a Form 3115 with the National Office to change its method of accounting for Costs for its Year 4 taxable year. Taxpayer filed its Year 4 tax return implementing the change in method of accounting for Costs and making the election. Subsequently, Taxpayer filed Form 1139, Corporation Application for Tentative Refund. A substantial portion of the anticipated refund was a result of the change in method of accounting for Costs.

Taxpayer was later informed by the IRS Service Center that its refund application was denied because Taxpayer was ineligible to make the election for its Year 4 taxable year under § 441(f) of the Internal Revenue Code. Taxpayer's ineligibility to make the election for Year 4 and its failure to make the election and the change in method of accounting for Costs for Year 3 has resulted in significant economic detriment to Taxpayer. Taxpayer indicated that the extraordinary economic conditions during the years at issue resulted in such significant economic harm to Taxpayer that the election, together with the change in method of accounting for Costs, would provide it with the relief that Congress intended to provide when it enacted the temporary legislation.

RULINGS REQUESTED

Taxpayer has requested a ruling granting permission under § 301.9100 to file a late Form 3115 to change its method accounting for Costs for Year 3.

LAW AND ANALYSIS

Section 446(e) of the Internal Revenue Code and § 1.446-1(e) of the Income Tax Regulations state that except as otherwise provided, a taxpayer must secure the Commissioner's written consent before changing a method of accounting for federal income tax purposes.

Section 1.446-1(e)(3)(i) requires that, in order to obtain the Commissioner's consent to a method change, a taxpayer must file Form 3115 during the taxable year in which the taxpayer desires to make the proposed change. Section 2.04 of Rev. Proc. 2008-52, 2008-36 I.R.B. 587, provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of

accounting, regardless of whether the change is from a permissible or an impermissible method.

Section 301.9100-3 provides generally for extensions of time to make regulatory elections under sections of the Code other than those for which § 301.9100-2 expressly prescribes automatic extensions. Section 301.9100-3(a) provides in part that the Commissioner will grant a request for an extension of time when a taxpayer provides evidence, including affidavits described in paragraph (e) of the regulation, establishing to the Commissioner's satisfaction that the taxpayer acted reasonably and in good faith, and that granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) states 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) inadvertently 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, 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, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides in part that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) 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; (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.

Section 301.9100-3(c)(1)(i) provides in part 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 taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). If 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.

Section 301.9100-3(c)(1)(ii) provides in part that the interests of the Government ordinarily are prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections such as the one in question. The regulation provides that the interests of the

Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested (i) is subject to the requirement in § 1.446-1(e)(3)(i) for advance written consent of the Commissioner; (ii) requires an adjustment under § 481(a) (or would require such an adjustment if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the year in which the election should have been made); (iii) would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or (iv) provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year. Thus, barring unusual and compelling circumstances, Taxpayer would not receive relief under § 301.9100-3 because the Government's interests are deemed prejudiced by its late filing.

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer has shown that it acted reasonably and in good faith and without hindsight. Further, Taxpayer has shown that the facts and circumstances surrounding its failure to timely file its change in method of accounting for Costs were so uncommon and of such disproportionate effect as to constitute a combination of unusual and compelling circumstances that lead to the conclusion that the interests of the Government are not prejudiced by granting the requested relief for an extension of time under § 301.9100-1(c).

RULING

Consent is hereby granted to Taxpayer to file Form 3115, requesting permission to change its method of accounting for Costs, effective Year 3. In this regard, we will consider the Form 3115 attached to Taxpayer's amended consolidated federal income tax return for Year 3 and the copy mailed to the IRS National Office to be timely filed if filed within the time designated in a private letter ruling to be issued by the Associate Chief Counsel, Corporate granting an extension of time to make the election for Year 3. A copy of this letter ruling should be associated with the Form 3115.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this private letter ruling. Specifically, no opinion is expressed or implied regarding whether the requested change in method of accounting is a proper method of accounting or has been properly implemented.

This ruling is directed only to the taxpayer that requested 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 representative.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)