

Internal Revenue Service

Number: **201702021**

Release Date: 1/13/2017

Index Number: 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B02

PLR-113134-16

Date: October 17, 2016

TY:

LEGEND:

Taxpayer =

Owner =

FirmX =

CPA1 =

CPA2 =

FirmY =

CPA3=

FirmZ =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Month1 =

Month2 =

Year1=

Year2 =

Year3 =

Year4 =

Tax Year =

Dear :

This is in response to your letter of Date1 filed on your behalf by your authorized representative. In the letter, Taxpayer requests an extension of time to file a late Form 3115 "Application for Change in Accounting Method" for Taxpayer's Tax Year. This request for relief is made in accordance with §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer represents the following facts:

Taxpayer operates as construction contractor, erecting steel structures. Taxpayer has been in business since Year1 and elected S Corporation status in Year1. Taxpayer is wholly owned by Owner.

Taxpayer engaged FirmX to provide compilation services and tax preparation services for Taxpayer in Year2. FirmX provided these services to Taxpayer from Year2 through Year4. Prior to Year4, Taxpayer capitalized its prepaid insurance expenses as a prepaid asset and periodically adjusted the deductions as the asset expired. In Year4, Taxpayer discussed with CPA1 the possibility of changing its method of accounting for the prepaid insurance expenses so that Taxpayer could deduct those expenses in the year that they were paid if they met the 12-month rule under § 1.263(a)-4(f) of the Income Tax Regulations. Such a change would ordinarily qualify as an automatic change of accounting method under section 10.05 of Rev. Proc. 2015-14, 2015-5 I.R.B. 50, and sections 9 and 6.03(1) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419. Taxpayer's management was not sophisticated in tax matters, but they believed that FirmX's experience with complex tax matters would allow FirmX to properly change Taxpayer's accounting method for the prepaid insurance expenses. Taxpayer's management provided all of the necessary information to FirmX and expected FirmX to take all steps necessary to file the proper forms to change the accounting method for the prepaid insurance expenses beginning in Tax Year.

CPA1 of FirmX was the partner responsible for bringing all the CPA FirmX's service providers together to serve Taxpayer. CPA2 of FirmX, with 35 years of experience in tax planning, review, and preparation was in charge of the tax compliance services for Taxpayer. CPA2 of FirmX utilized various personnel in her office to prepare Taxpayer's Tax Year Form 1120S return in Month1 and Month2 of Year4. CPA2 of FirmX also oversaw the preparation of Taxpayer's Tax Year Form 3115 which was completed on Date4.

On Date3, FirmX had acquired FirmZ, an accounting firm where Taxpayer was an existing client. The acquisition of FirmZ led to the adoption of a new paperless system for filing and storage of tax forms and records. The new tax return processing procedures resulted in an inadvertent error by FirmX. The result was that Taxpayer's Tax Year Form 3115, although prepared, was not attached to Taxpayer's timely electronically-filed Tax Year Form 1120S. The Form 3115 was prepared and saved in FirmX's electronic file for Taxpayer. However, because a box was not checked on

FirmX's internal processing control sheet alerting processing that a Form 3115 was to be attached to the return; it was inadvertently omitted from Taxpayer's Tax Year Form 1120S, and the requisite copy was not filed with the IRS in Ogden, Utah as required by section 6.03(1)(a)(i) of Rev. Proc. 2015-13. Taxpayer's Tax Year Form 1120S, however, was filed consistent with the method change, did reference the Form 3115, and included the requisite section 481(a) adjustment. At the time the return was electronically filed, no one was aware that the Form 3115 was omitted from the Tax Year return and that a copy was not filed with the IRS in Ogden.

For reasons unrelated to this omission, Taxpayer hired a new accounting firm around Date5, called FirmY. The omission of Taxpayer's Tax Year Form 3115 was not discovered until Date6, when CPA3 asked Taxpayer for a copy of it. When Taxpayer asked FirmX for a copy of its Form 3115, Firm X discovered that it failed to file Taxpayer's Tax Year Form 3115 with Taxpayer's Tax Year Form 2011S and failed to file a copy with the IRS in Ogden. As soon as the omission was discovered, FirmX immediately contacted Taxpayer and began preparing this letter requesting relief from the Service.

LAW:

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 301.9100-1(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) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests 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(c)(1) provides that the interests of the government are prejudiced if granting relief would result in the 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. The interests of the government are ordinarily 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) provides special rules for accounting method regulatory elections. Section 301.9100-3(c)(2) provides that the interests of the government are deemed prejudiced, except in unusual or compelling circumstances, if the accounting method regulatory election for which relief is requested is subject to the advance consent procedures for method changes, requires a § 481(a) adjustment, would permit a change from an impermissible method of accounting that is an issue under consideration by examination or any other setting, or provides a more favorable method of accounting if the election is made by a certain date or taxable year.

Section 6.03(4)(b) of Rev. Proc. 2015-13 provides that, "Except in unusual and compelling circumstances, a taxpayer is not eligible for an extension of time to file a Form 3115, and is not eligible to make a late election under section 7.03(3)(d) of Rev. Proc. 2015-13 under §§ 301.9100-1 and 301.9100-3. See § 301.9100-3 (c) (2) and Rev. Proc. 2014-1 (or successor)." The facts, as submitted by Taxpayer, however, indicate that the circumstances in this instance are unusual and compelling. Taxpayer engaged FirmX believing their experience with complex tax matters would allow FirmX to properly change Taxpayer's accounting method for the prepaid insurance expenses. Taxpayer's management provided all of the necessary information to FirmX and relied on them to take all steps necessary to file the proper forms to change the accounting method beginning in Tax Year. Firm X prepared the Form 3115 and prepared the return as if the automatic change in method of accounting had been properly made. Taxpayer's Tax Year return referenced the Form 3115 and included the requisite section 481(a) adjustment. It was an inadvertent misstep by one of Firm X's employees that prevented the Form 3115 from being attached to Taxpayer's Tax Year return and prevented a copy of the Form 3115 from being filed with the IRS in Ogden. Firm X's failure to file Taxpayer's Form 3115 was beyond Taxpayer's control. Accordingly, we have determined that, under these circumstances, Taxpayer may make a late election under section 7.03(3)(d) of Rev. Proc. 2015-13 in accordance with Treas. Reg. §§ 301.9100-1 and 301.9100-3.

Taxpayer has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations. The information and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith, and that there are unusual and compelling circumstances meriting a late election under section 7.03(3)(d) of Rev. Proc. 2015-13. The affidavits presented show that Taxpayer reasonably relied on qualified tax professionals for the proper filing of Taxpayer's federal tax return and accompanying Form 3115. The affidavits presented also show that FirmX inadvertently failed to file the Form 3115 with Taxpayer's Form 1120S return and failed to file a copy with the IRS in Ogden, but that the return otherwise reflected the intended change in accounting method, referred to the Form 3115, and included the requisite section 481(a) adjustment. Upon discovery of the error, FirmX filed for relief

on behalf of Taxpayer before the government discovered the error.

The information and representations presented establish that Taxpayer is not seeking to alter a return position for which an accuracy-related penalty had been or could be imposed under § 6662 at the time relief was requested. Taxpayer is not using hindsight in requesting relief, and no facts have changed since the time of the original filing deadline.

Finally, granting an extension will not prejudice the interests of the government. It is represented that Taxpayer would not have a lower tax liability in the aggregate for all taxable years affected, if given permission to file the Form 3115 at this time than Taxpayer would have had if had been properly filed by the original due date of the return. Taxpayer has represented that no taxable years are closed by the period of limitations on assessment, and the IRS had not discovered the Form 3115 was missing before Taxpayer filed for relief.

CONCLUSION:

Based upon our analysis of the facts as represented, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Therefore, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer is granted an extension of 60 days from the date of this ruling to properly file the Tax Year Form 3115 in accordance with section 6.03(1) of Rev. Proc. 2015-13.

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 letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Code.

A copy of this ruling should be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Bridget E. Tombul

BRIDGET E. TOMBUL
Chief, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)

Enc: copy for § 6110 purposes