

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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Date:  
September 14, 2018

Taxpayer =  
CPA =  
Date 1 =  
Date 2 =  
Date 3 =  
Year 1 =  
Dear :

This letter responds to a letter dated March 20, 2018, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to change its method of accounting under § 446(e) of the Internal Revenue Code, § 1.446-1(e) of the Income Tax Regulations, and the automatic consent procedures of Rev. Proc. 2015-13, for the tax year ending on Date 1.

**FACTS**

Taxpayer is a domestic C corporation that, along with its subsidiaries, files a consolidated federal income tax return. Taxpayer uses a calendar taxable year, and it uses an accrual method as its overall method of accounting.

Taxpayer timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, providing Taxpayer an extension until Date 2, to file its federal income tax return for the Year 1 taxable year. Taxpayer engaged CPA to prepare its federal income tax return for Year 1. Taxpayer

also instructed CPA to file a Form 3115, *Application for Change in Accounting Method*, to change Taxpayer's, and a wholly owned subsidiary's, method of accounting for certain prepaid insurance premium costs under Treas. Reg. § 1.263(a)-4(f), pursuant to the automatic consent procedures in Rev. Proc. 2015-13 and Rev. Proc. 2017-30, starting with Year 1. Section 6.03(1) of Rev. Proc. 2015-13 requires a taxpayer using the automatic consent procedures for a change in method of accounting to attach a completed Form 3115 to the taxpayer's timely filed (including extensions) original tax return for the year of change. CPA represented to Taxpayer that it would file Taxpayer's Form 1120 and Form 3115 before the extended due date of Taxpayer's return. Prior to Year 1, CPA had timely filed Taxpayer's federal and state income tax returns for the previous five years.

On Date 3 (three days before the extended due date for Taxpayer's return), CPA provided Taxpayer with a completed return (with Form 3115) for Taxpayer to review. The same day, Taxpayer informed CPA that it had completed its review and instructed CPA to file the return and Form 3115.

Due to an unusual series of events, CPA could not e-file Taxpayer's Form 1120 and Form 3115 for the year at issue until one day following the extended due date of Date 2. However, CPA did file a duplicate copy of Taxpayer's Form 3115 with the IRS in Covington, KY, on Date 2, as required by section 6.03(1)(a)(i) of Rev. Proc. 2015-13.

CPA advised Taxpayer that its original Form 3115 was not timely filed, and that its change in accounting method did not comply with the automatic consent requirements in Rev. Proc. 2015-13 and Rev. Proc. 2017-30. CPA advised Taxpayer that it may be eligible for relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, and Taxpayer engaged CPA to prepare a request for such relief.

## **LAW**

Rev. Proc. 2015-13 provides the procedures by which a taxpayer may obtain automatic consent to change certain accounting methods. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner to change its method of accounting under § 446(e) and the regulations thereunder.

Section 6.03(1)(a)(i) of Rev. Proc. 2015-13 provides that a taxpayer changing an accounting method pursuant to Rev. Proc. 2015-13 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including any extensions) original federal income tax return for the year of change, and a copy (with signature) of the Form 3115 must be filed with the appropriate office of the Internal Revenue Service 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) 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 301.9100-1(b) further provides that an election includes a request to adopt, change, or retain an accounting method.

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 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(b)(1) provides that a taxpayer is 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 reasonable diligence (taking into account the taxpayer's experience and the complexity of the return at 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 deemed to have 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) provides that an extension of time to make a regulatory election will be granted only when the interests of the government are not prejudiced by the granting of relief. 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). Section 301.9100-3(c)(1)(i).

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

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. 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 procedure set forth in § 1.446-1(e)(3)(i) of this chapter (requiring advance written consent of the Commissioner);
- (ii) requires an adjustment under § 481(a) (or would require an adjustment under § 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable 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.

## **CONCLUSION**

Taxpayer's election is a regulatory election, as defined in § 301.9100-1(b), because the due date of the election is prescribed in a Rev. Proc. 2015-13, which was published in the Internal Revenue bulletin. Based solely on the information provided and representations made, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Accordingly, 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 file the required original Form 3115 described above for the Year 1 taxable year with an amended federal income tax return for that year.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax years affected. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any fact or item discussed or referenced in this letter. Specifically, we have no opinion, either expressed or implied, concerning (1) whether the accounting method change Taxpayer has attempted to make is eligible to be made under the automatic consent procedures of Rev. Proc. 2015-13 and Rev. Proc. 2017-30; and (2) whether Taxpayer otherwise meets the requirements of Rev. Proc. 2015-13 to make an accounting method change using Rev. Proc. 2015-13. Further, no opinion is expressed or implied regarding the correctness of Taxpayer's accounting method.

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 provisions of the power of attorney currently on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Norma C. Rotunno  
Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

CC: