



Taxpayer is the common parent of an affiliated group of corporations filing consolidated returns. The group files consolidated returns on the basis of the calendar year. Taxpayer uses an overall accrual method of accounting for federal income tax purposes.

The group consists of the following entities:

**Legal Entity**

**EIN**

**PBAC**

Taxpayer timely filed its federal income tax return for the taxable year ending Date2, along with the original of a Form 3115 to change its method of accounting for prepaid payment liabilities under section 11.05 of Rev. Proc. 2018-31. However, as a result of an administrative oversight, Taxpayer failed to file a duplicate copy of this Form 3115, with signature, with the IRS in Covington, KY as required by section 9.05(2) of Rev. Proc. 2019-1.

Taxpayer engaged A, a certified public accounting firm, to prepare and file its federal tax return and Form 3115 for the taxable year ending Date2. Taxpayer, with the assistance of A, electronically filed its Form 1120, U.S. Corporation Income Tax Return (with original Form 3115 application attached), for the taxable year ended Date2. However, because of unusual circumstances and administrative oversight, the copy of the signed Form 3115 was not mailed to the IRS Covington, KY office.

Shortly after Date3, A discovered that the duplicate copy of the Form 3115 application was not filed with the IRS in Covington for the year of change. Upon discovery of this oversight, A notified Taxpayer and immediately underwent the process to request an extension of time under Treas. Reg. § 301.9100 to file the Form 3115 with the IRS in Covington for the taxable year ended Date2.

**LAW AND ANALYSIS**

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 accounting method under § 446(e) of the Internal Revenue Code and the Income Tax Regulations thereunder. Section 9.05(2) of Rev. Proc. 2019-1 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 IRS 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. With respect to the “appropriate office of the IRS,” section 9.05(2) of Rev. Proc. 2019-1 now provides that the duplicate copy of the automatic change request Form 3115 should be mailed to the IRS office in Covington, KY.

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 extensions of time for regulatory elections 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, in general, 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, 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 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 section 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 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 under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

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.

Taxpayer's election is a regulatory election as defined in § 301.9100-1(b) because the due date of the election is prescribed in § 1.263(a)-5(f) of the Income Tax Regulations. The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

## CONCLUSION

Based upon our analysis of the facts and representations provided, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government due to unusual or compelling circumstances. 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 file a duplicate copy of a completed automatic Form 3115 with the IRS office in Covington, Kentucky as required.

## CAVEATS

The rulings contained in this letter are based on information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. 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 aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether Taxpayer

properly included the correct costs as its success-based fees subject to the retroactive election, or whether Taxpayer's Transaction is within the scope of Rev. Proc. 2011-29.

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

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. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

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.

Sincerely yours,

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David Chistensen  
Assistant to Chief, Branch 2  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes

cc: