

Internal Revenue Service

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LEGEND

Taxpayer = _____.

Applicant 1 = _____

Applicant 2 = _____

Accounting Firm = _____

Tax Year = _____

Dear _____:

This letter is in reply to a request for a private letter ruling made by Taxpayer on behalf of itself and Applicants 1 and 2. Taxpayer requests an extension of time under sections 301.9100-1(c) and 301.9100-3 of the Procedure and Administration Regulations to file Forms 3115, Application For Change in Accounting Method, for Tax Year.

FACTS

Taxpayer and its subsidiaries, Applicants 1 and 2, file Federal consolidated income tax returns. These returns are filed on a calendar year basis.

Taxpayer retained the services of Accounting Firm to assist in preparing its Federal consolidated tax return for Tax Year. While this return was being prepared, Taxpayer decided to implement three accounting method changes. Accounting Firm determined that all three accounting method changes could be implemented *via* the automatic change procedures set forth in Rev. Proc. 2015-13, 2013-5 I.R.B. 419. The firm accordingly helped Taxpayer prepare the three automatic accounting method changes requests for Tax Year. These three changes are:

To change Applicant 1 and Applicant 2's depreciation of "certain tangible property and computer software" from impermissible methods to permissible accounting methods under Section 6.01 of Rev. Proc. 2018-31, 2018-22 I.R.B. 637.

To change the accounting method used by Applicant 1 to recognize income for advance payments provided under Section 5.02(2) of Rev. Proc. 2004-34, 2004-22 I.R.B. 991 and under Section 16.07 of Rev. Proc. 2018-31.

To change the accounting method used by Applicant 2 relating to its election of the "remodel-refresh safe harbor" provided by Section 5.02 of Rev. Proc. 2015-56, 2015-49 I.R.B. 827 under Section 11.10 of Rev. Proc. 2018-31.

With the authorization of Taxpayer, Accounting Firm timely electronically filed Taxpayer's Federal consolidated income tax return for Tax Year. Included in this filing, were the three original Forms 3115. Also, the three accounting method changes were reflected on the consolidated return filed for Tax Year. However, the required copies of the Forms 3115 were not filed with the appropriate office at the Internal Revenue Service (IRS) due to "an unintentional error."

Taxpayer represents that it was a few months after Accounting Firm filed its Federal consolidated income tax return for Tax Year that it discovered the failure to submit copies of the three Forms 3115 to the appropriate office of the IRS. It also represents that it engaged Accounting Firm to quickly file this request for an extension of time under sections 301.9100-1(c) and 301.9100-3.

RULINGS REQUESTED

Taxpayer requests an extension of time for filing the copies of the three original Forms 3115, which were attached to Taxpayer's Federal consolidated income tax return for Tax Year under sections 301.9100-1(c) and 301.9100-3.

LAW AND ANALYSIS

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in sections 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 regulations published

in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides for automatic extensions of time for making certain elections. Section 301.9100-3 provides for extensions of time for making elections that do not meet the requirements of section 301.9100-2.

The requested accounting method changes are regulatory elections as defined under section 301.9100-1(b) because the due date of the changes are prescribed in section 1.446-1(e) of the Income Tax Regulations and Section 6.03(3)(a) of Rev. Proc. 2015 - 13. Taxpayer's request must be analyzed under the requirements of section 301.9100-3 because the automatic provisions of section 301.9100-2 are not applicable.

Requests for relief under section 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interest of the government. See section 301.9100-3(a).

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 a regulatory election is discovered by the IRS; (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 of the election; (iv) reasonably relied on written advice of the IRS; 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 is deemed not 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 section 6662 of the Internal Revenue Code 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 and chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(i) 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 (taking into account the time value of money). The section also provides that, 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

Further, section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should be 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

On the basis of Taxpayer's representations, we conclude that the requirements of sections 301.9100-1(c) and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer to file copies of the three Forms 3115. This extension shall be for a period of 45 days from the date of this ruling.

Except as expressly set forth above, this office neither expresses nor implies any opinion concerning any tax consequences of the facts described above under any other provision of the Code or regulations. This ruling merely permits Taxpayer to file copies of Form 3115 late. We have no opinion as to whether any of the three accounting method changes discussed in this private letter ruling can be implemented *via* the automatic change procedures set forth in Rev. Proc. 2015-13 or whether the changes should be approved by a director in connection with the examination of Taxpayer's Federal consolidated income tax returns. 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 this request for an extension of time to file the required copies of the three Forms 3115, all material is subject to verification on examination.

This ruling is directed only to Taxpayer who 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 each of Taxpayer's authorized representatives.

Sincerely,

Cheryl L. Oseekey
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)