

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B06
PLR-105325-23

Date:
September 05, 2023

Legend:

Taxpayer =

Year =

CPA =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This letter responds to a letter and subsequent correspondence submitted by Taxpayer. Taxpayer has requested that the Commissioner of Internal Revenue give it an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file the originals and signed duplicate copies of two Forms 3115, *Application for Change in Accounting Method*. These documents should have been filed by Taxpayer on or before the extended deadline for filing its federal income tax return for the Year taxable year pursuant to section 6.03(1)(a)(i) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, however Taxpayer failed to do so.

FACTS

Taxpayer represents the following facts:

Taxpayer is an S corporation. CPA prepares Taxpayer's federal income tax returns. Taxpayer computes taxable income on a calendar year basis using an overall accrual method of accounting. In computing taxable income, Taxpayer also uses methods of accounting under §§ 263A and 472 of the Internal Revenue Code.

For the Year taxable year, Taxpayer decided to change its accounting method for §§ 263A and 472. It also decided that the changes could be implemented *via* the automatic change administrative procedures. Given this decision, Taxpayer was to have filed two originals and two copies of Forms 3115 no later than when it filed its federal income tax return for Year.

Taxpayer failed to timely file its federal income tax return for Year and failed to timely file both the originals and signed duplicate copies of the two Forms 3115. This failure to timely file Taxpayer's tax return and the required Forms 3115 was due to various mistakes. Taxpayer failed to return to CPA a Form 8879, *IRS e-file Signature Authorization*. Because of this failure, CPA's software tracking system failed to update and CPA was not aware of the tax filing dates for Taxpayer. Additionally, a manager of CPA, who was integrally involved with Taxpayer's tax filings, left the employ of CPA before the due date of Taxpayer's Year federal income tax return. The remaining CPA staff assumed that the exiting manager had fulfilled Taxpayer's tax obligations for Year. Lastly, CPA and Taxpayer were both dealing with significant changes to their work practices and policies caused by the COVID emergency, including working remotely.

Taxpayer discovered its failure to file the Year federal income tax return and the Forms 3115 on Date1, at which time Taxpayer filed the return and Forms 3115. Waiting almost a year, on Date2, Taxpayer submitted this request for an extension of time to file the originals and signed duplicate copies of the two Forms 3115.

A conference of right was held on Date3. Subsequently, Taxpayer responded with a post-conference submission. On Date4, after considering the information provided at the conference of right as well as in the post-conference submission and the earlier submitted materials, Taxpayer's authorized representatives were notified that an extension of time to file the missing originals and signed duplicate copies of the two Forms 3115 could not be granted.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to file the originals and signed duplicate copies of its two Forms 3115 so as to cure its previous failure to timely file the forms in connection with the method changes under §§ 263A and 472 that Taxpayer made in Year.

LAW AND ANALYSIS

Section 446(e) requires a taxpayer to secure consent before changing its method of accounting. Section 1.446-1(e)(3)(i) of the Income Tax Regulations provides that, to secure the Commissioner's consent for a change in method of accounting, a taxpayer must file an application on Form 3115 with the Commissioner.

Rev. Proc. 2015-13 provides the current procedures by which a taxpayer may obtain the Commissioner's consent to change its method of accounting. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the required consent 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 the automatic filing provisions of 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 6.03(4)(b) of Proc. 2015-13 provides that, except in unusual and compelling circumstances or as provided in section 6.03(4)(a) of Rev. Proc. 2015-13 (the 6-month automatic extension for filing a Form 3115), a taxpayer is not eligible for an extension of time to file a Form 3115.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. For purposes of § 301-9100, an "election" includes a request to change 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 an extension of time subject to § 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 the granting of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides circumstances in which a taxpayer is deemed to have acted reasonably and in good faith. Section 301.9100-3(b)(3) provides circumstances in which a taxpayer is deemed not to have acted reasonably and in good faith.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. These rules provide that the interests of the Government are deemed to be prejudiced when the regulatory election concerns accounting methods unless there are unusual and compelling circumstances.

What are unusual and compelling circumstances must be decided on a case-by-case basis in light of all applicable facts and circumstances. T.D. 8742, 1998-1 C.B. 388 (February 2, 1998). For example, if the missed regulatory election relates to a nonrecurring transaction, this fact would be considered in determining whether there are unusual and compelling circumstances. *Id.*

While the Commissioner has discretion to grant an extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections, the Commissioner must weigh the extension requested with “the policy of promoting efficient tax administration.” T.D. 8742. Balancing Taxpayer’s desire to correct its mistake with the need to provide “limited time periods” to perfect accounting methods and considering why Taxpayer’s mistake occurred, the Commissioner concludes that Taxpayer has failed to show unusual and compelling circumstances within the meaning of § 301.9100-3(c)(2). *Id.* Accordingly, the Government’s interests are deemed prejudiced.

CONCLUSION

Based on the materials submitted by Taxpayer, the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied in this case. Specifically, Taxpayer has failed to demonstrate unusual and compelling circumstances and, accordingly, the Government’s interests are deemed prejudiced.

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. The copies will be sent electronically as is permissible under section 7.02(2) and (5) of Rev. Proc. 2023-1, 2023-1 I.R.B. 1. A copy of this letter is also being sent to the appropriate operating division director.

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.

Sincerely,

Cheryl L. Oseekey
Senior Counsel, Branch 6
(Income Tax & Accounting)

Enclosure:

PLR-105325-23

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cc: