

Internal Revenue Service

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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-105918-23

Date:

September 18, 2023

Legend

Taxpayer =

Date A =

Date B =

Subsidiary A =

Date C =

Subsidiary B =

Subsidiary C =

Date D =

Subsidiary D =

Date E =

Date F =

Accounting Firm =

Dear _____ :

This letter is in response to a request for a private letter ruling (“Request”) submitted Date A by Taxpayer for an extension of time, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to make elections on behalf of its subsidiaries to change the subsidiaries’ overall method of accounting from the cash method to the accrual method and to change to the deferral method for advance payments under § 451(c)(2) of the Internal Revenue Code and § 1.451-8(c) of the Income Tax Regulations for the taxable year ending on Date B. This Request is being issued electronically as permissible under §§ 7.02(5) and 9.04(3) of Revenue Procedure 2023-1, 2023-1 I.R.B. 1, 35, 49-50.

FACTS AND REPRESENTATIONS

Taxpayer represents the following:

Taxpayer is the parent of a consolidated group that files a federal income tax return. Taxpayer has acquired entities in the business of engineering and architectural services. Taxpayer files its consolidated return on the basis of a calendar year and uses an overall accrual method of accounting for federal income tax purposes.

Taxpayer acquired Subsidiary A on Date C. On Date C, Taxpayer also acquired the two subsidiaries wholly-owned by Subsidiary A, Subsidiary B and Subsidiary C. Prior to Taxpayer’s acquisition of Subsidiary A, Subsidiary A was the parent of a consolidated group that reported taxable income on a consolidated income tax return that included both Subsidiary B and Subsidiary C. On Date D, taxpayer acquired Subsidiary D.

Taxpayer filed this Request on behalf of itself and its subsidiaries, Subsidiary A, Subsidiary B, Subsidiary C, and Subsidiary D (the “Subsidiaries”).

Taxpayer retained the services of Accounting Firm to prepare its consolidated income tax return for the taxable year ending Date B. In Date E, Accounting Firm advised Taxpayer that it was required to file a Form 3115 to change the overall method of accounting for Subsidiary A, Subsidiary B, Subsidiary C, and Subsidiary D from the cash method to the accrual method.¹

Also in Date E, Accounting Firm and Taxpayer held further consultations and Taxpayer decided that it would request the Service’s permission to change the Subsidiaries’ method of accounting to defer recognition of eligible advance payments related to

¹ Prior to Taxpayer’s acquisition of the Subsidiaries, the Subsidiaries were qualified personal service corporations that used the cash method pursuant to § 448(b)(2).

certain services in accordance with the deferral method as described in § 451(c)(2) and Treas. Reg. § 1.451-8(c). Accounting Firm prepared the Form 3115 to make both changes using the automatic consent procedures set forth in Rev. Proc. 2015-13, 2015-5 I.R.B. 419.²

Accounting Firm also prepared Taxpayer's consolidated federal income tax return (Form 1120) for the taxable year ending Date B. On Date F, after receiving Taxpayer's approval, Accounting Firm electronically filed the Form 3115 with Taxpayer's consolidated Form 1120, which included in income a positive adjustment under § 481(a) with regard to the Form 3115 attached to the return.³ However, Accounting Firm failed to submit a signed copy of Taxpayer's Form 3115 to the IRS Office in Ogden, Utah, as required by § 6.03(1)(a)(i) of Rev. Proc. 2015-13. Moreover, Taxpayer represents that the original Form 3115 that was attached to its consolidated Form 1120 was missing some required statements. Taxpayer represents that it was unaware of this failure.

When Taxpayer and Accounting Firm realized that Accounting Firm failed to submit a copy of the Form 3115 to the IRS Office in Ogden, Utah, and that the Form 3115 filed with the original return was incomplete, Taxpayer filed this request to obtain from the Commissioner an extension of time under Treas. Reg. §§ 301.9100-1(c) and 301.9100-3 to file the Form 3115.

RULING REQUESTED

Taxpayer requests an extension of time under Treas. Reg. §§ 301.9100-1(c) and 301.9100-3 to (i) file an amended federal income tax return for the taxable year ending Date B, which will include a completed original Form 3115 with all required statements and (ii) submit a separate signed copy of the completed Form 3115 with the IRS Office in Ogden, Utah.

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 method of accounting under § 446(e) and the Income Tax 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 a Form 3115 and file

² Taxpayer's application to change the overall method of accounting and the deferral method of accounting for advance payments were set forth on one Form 3115. See § 6.03(1)(b) of Rev. Proc. 2015-13 (permitting taxpayers in some cases to submit multiple concurrent automatic changes on one Form 3115).

³ Taxpayer's Form 1120, Schedules M-3 set forth the adjustments under § 481(a) attributable to each Subsidiary.

that 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 IRS Office in Ogden, Utah, no earlier than the first day of the requested year of change and no later than when the original Form 3115 is filed with the federal income tax return for the requested year of change.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Treas. Reg. § 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.

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

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

Treas. Reg. § 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 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 of the election;
- (iv) reasonably relied on 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.

Treas. Reg. § 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 § 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 and chose not to file the election; or

(iii) uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1)(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 tax years affected by the election than the taxpayer would have had if the election had been timely made. 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.

Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the tax year in which the regulatory election should have been made, or any tax 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.

Treas. Reg. § 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. This section provides, in relevant part, that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances when the accounting method regulatory election for which relief is requested is subject to the procedure described in Treas. Reg. § 1.446-1(e)(3)(i) or the relief requires an adjustment under § 481(a) (or would require an adjustment under § 481(a) if the taxpayer changed to the accounting method for which relief is requested in a taxable year subsequent to the taxable year the election should have been made).

CONCLUSION

On the basis of Taxpayer's representations, we conclude that there are unusual and compelling circumstances, and that the requirements of Treas. Reg. §§ 301.9100-1(c) and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer (i) to file an amended federal income tax return for the taxable year ending Date B (with a complete Form 3115 attached), and (ii) to file a signed copy of that complete Form 3115 with the IRS Office in Ogden, Utah. No other revision to this return can be made. This extension shall be for a period of 60 days from the date of this letter ruling.

Except as expressly set forth above, we neither express nor imply any opinion concerning the tax consequences of the facts described above under any other provision of the Code or regulations. Specifically, we have no opinion, either expressed or implied, concerning whether Taxpayer and Subsidiaries are otherwise eligible to file the Form 3115 under the automatic consent procedures of Rev. Proc. 2015-13 and the revenue procedure providing the List of Automatic Changes for the year in issue. Further, no opinion is expressed regarding whether Taxpayer's proposed methods of accounting are permissible.

The ruling contained in this letter is 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 Form 3115, all material is subject to verification on examination.

This ruling is directed only to Taxpayer and Subsidiary. 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,

Robert A. Martin
Senior Technician Reviewer, Branch 2
(Income Tax & Accounting)

CC: