

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:B06

PLR-106785-23

Date:

September 22, 2023

Taxpayer =

Applicant =

CPA =

Date A =

Date B =

Date C =

Date D =

Date E =

Year =

Dear :

This ruling responds to a recent letter that was submitted by Taxpayer's representative, CPA. CPA has requested that the Commissioner of the Internal Revenue Service give Taxpayer an extension of time pursuant to §§ 301.9100-1 and 301-9100-3 of the Procedure and Administration Regulations to file both the original and signed duplicate copies of the Form 3115, *Application for Change in Accounting Method*. Taxpayer

should have filed the Form 3115 on behalf of Applicant, pursuant to section 6.03(1)(a)(i) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, on or before Date A.

FACTS

Taxpayer represents the following facts:

Applicant is a limited liability company wholly owned by Taxpayer and is disregarded for tax purposes. Taxpayer engaged CPA to prepare and file its federal income tax return. While preparing Taxpayer's federal income tax return for Year, CPA determined that Applicant was likely using an improper method of accounting under § 263A of the Internal Revenue Code. Subsequently, CPA was also engaged to prepare a Form 3115 to change Applicant's method of accounting under § 263A, using the automatic consent procedures of Rev. Proc. 2015-13, and Rev. Proc. 2022-14, 2022-7 I.R.B. 502.

Taxpayer timely filed Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, which provided Taxpayer an extension until Date A to file its federal income tax return for Year.

In the weeks leading up to the Date A deadline, the manager preparing Taxpayer's federal income tax return at CPA resigned his position at CPA on extremely short notice. This left the partner on CPA's team to finish preparing Taxpayer's tax return.

CPA timely filed Taxpayer's federal income tax return on Date B. The tax return was filed on a basis consistent with Applicant's method change having been properly implemented. However, on Date C, CPA determined that the Form 3115 had not been properly attached to the tax return, nor had a copy been sent to the appropriate IRS Service Center. See section 6.03(1)(a)(i) of Rev. Proc. 2015-13. CPA subsequently submitted this request for an extension of time to file both the original and duplicate copies of Form 3115.

A conference of right was held on Date D. On Date E, after considering the information provided at the conference of right and the earlier submitted materials, Taxpayer's authorized representative, CPA, was notified that an extension of time to file the missing original and signed duplicate copy could not be granted.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to file an amended federal income tax return with the original Form 3115 and to file the duplicate copy of the Form 3115 with the appropriate IRS Service Center so as to timely request to change Applicant's method of accounting under § 263A for 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 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 the automatic consent 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 standard 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 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 provides 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 determined on a case-by-case basis considering 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 determined 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 a taxpayer’s desire to correct its mistake with the need to provide “limited time periods” to perfect accounting methods and considering why the taxpayer’s mistake occurred, the Commissioner concludes that the 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 solely on the representations submitted, this office concludes that 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.

The ruling contained in this letter ruling is based upon facts and representations submitted by CPA on behalf of itself, Taxpayer, and Applicant, with accompanying penalties of perjury statements executed by appropriate parties. 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. 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 our office, we will send a copy of this letter to each of Taxpayer's authorized representatives.

Sincerely,

ANNA W. GLEYSTEN
Senior Counsel, Branch 6
(Income Tax & Accounting)

cc: