

Section 442 provides that if a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary.

Section 1.442-1(b) of the Income Tax Regulations along with the instructions to Form 1128 and Revenue Procedure 2006-45, 2006-45 I.R.B. 851, provide generally that to secure the Commissioner's consent to a change in accounting period, the taxpayer must file an application on Form 1128 with the Commissioner on or before the due date for filing of the short period return.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in section 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the government.

Under section 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

In addition, 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 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was fully informed in all material respects of the required election and related tax consequences but chose not to make the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(3) provides, in part, that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128, *Application to Adopt, Change, or Retain a Tax Year* (or other required statement).

Based on the facts and representations submitted, we conclude that Taxpayer has not acted reasonably and in good faith and has not satisfied the requirements under section 301.9100-3(b) for granting an extension of time to file a Form 1128 to change its accounting period. Furthermore, Taxpayer has failed to demonstrate unusual and compelling circumstances and, accordingly, the Government's interests are deemed prejudiced.

Thus, Taxpayer's request for an extension of time to file the Form 1128 is denied.

No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and regulations which may be applicable thereto or the tax treatment of any conditions existing at the time of or effects resulting from the transaction which are not specifically set forth by the above ruling.

The ruling contained in this letter ruling is based upon facts and representations submitted by Taxpayer with accompanying penalty of perjury statements executed by appropriate parties.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Erika C. Reigle
Senior Technician Reviewer, Branch 8
Office of Associate Chief Counsel
(Income Tax and Accounting)

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cc: