

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-110852-19
Date:
October 07, 2019

TY:

LEGEND:

Taxpayer =
A =
B =
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Date 1 =
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Dear :

This responds to a letter ruling request dated May 7, 2019, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to change its method of accounting under section 446(e) of the Internal Revenue Code, section 1.446-1(e) of the Income Tax Regulations, and the automatic consent procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, for the tax year ending on Date 1.

FACTS

Taxpayer represents the following:

Taxpayer is owned by A, a corporation based in B. A does not have a tax department in C. Taxpayer files a consolidated U.S. federal income tax return on Form 1120, U.S.

Corporation Income Tax Return. Taxpayer is filing this request on behalf of itself as well as its subsidiaries D, E, and F.

Taxpayer uses the accrual method of accounting. However, Taxpayer determined that for a specific item, its subcontractor payable account, it was using the cash method. The third-party contractors provide the services and issue an invoice to Taxpayer for payment. The unpaid invoice amounts at year end are reflected in the subcontractor payable account. Taxpayer reversed this balance for tax purposes, effectively delaying the deduction until the invoice was paid (cash method), rather than recognizing the liability in the tax year in which the services were rendered to Taxpayer. Taxpayer represents that because the liability for the subcontractor services is fixed and determinable as of the end of the tax year, and economic performance is met because the services have been rendered as of the end of the tax year, the liability for the subcontractor accounts payable meets the requirements of section 461 and sections 1.461-1(a)(2) and 1.461-4(d)(2).

While preparing the tax return for TY, Taxpayer determined that the subcontractor payable account was not properly accounted for using the accrual method, and determined it should change its method of accounting to comply with section 461 and the regulations thereunder. Taxpayer determined that the accounting method change had automatic consent under Rev. Proc. 2018-31, 2018-22 I.R.B. 637, filed Form 3115, Application for Change in Accounting Method with its TY return, took into account the section 481(a) adjustment, and used the accrual method for the subcontractor payable account in computing its taxable income for TY.

Taxpayer timely filed its original TY U.S. federal income tax return, including the Form 3115 described above, on Date 2. However, Taxpayer inadvertently failed to file the Ogden copy of the Form 3115 as required by Rev. Proc. 2015-13 on or before the date the Form 3115 was filed with Taxpayer's timely filed return for the tax year of change.

A miscommunication between A and Taxpayer resulted in a failure to file the Ogden copy of the Form 3115. The failure to file the Ogden copy of the Form 3115 was discovered by Taxpayer on Date 3. Shortly after discovering the failure to file the Ogden copy of the Form 3115, Taxpayer contacted Firm, and Firm advised Taxpayer to request an extension of time under section 301.9100-3.

In addition to failing to file the Ogden copy of the Form 3115, Taxpayer included the incorrect designated change number on page one of the Form 3115.

LAW

Rev. Proc. 2015-13 provides procedures by which a taxpayer may obtain automatic consent to change certain accounting methods. A taxpayer complying with all the applicable provisions of the revenue procedure can obtain 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 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 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 tax return for the year of change.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory 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 section 301.9100-2.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides extensions of time to make a regulatory election under Code sections other than those for which section 301.9100-2 expressly permits automatic extensions. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer --

(i) requests relief before the failure to make the 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 due diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the 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.

Under section 301.9100-3(b)(3), a taxpayer will not be considered 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 (taking into account section 1.6664-2(c)(3)) 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, but chose not to file 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 only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides, in part, 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). 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 have been 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.

CONCLUSION

Taxpayer's election is a regulatory election, as defined in section 301.9100-1(b), because the due date of the election is prescribed in Rev. Proc. 2015-13, which was published in the Internal Revenue Bulletin. Based solely on the information provided and representations made, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Accordingly, the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 60 days from the date of this ruling to file the required original Form 3115 described above for TY with an amended federal income tax return for that year.

A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences discussed or referenced herein in this letter. Specifically, we have no opinion, either expressed or implied, concerning whether the accounting method change Taxpayer has attempted to make is eligible to be made under the automatic procedures of Rev. Proc. 2015-13 and Rev. Proc. 2017-30, 2017-18 I.R.B. 1131. Further, no opinion is expressed or implied regarding the correctness of Taxpayer's method of accounting.

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. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

Sincerely,

David B. Silber
Acting Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: