

**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:

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Refer Reply To:

CC:ITA:B06

PLR-125219-20

Date:

January 21, 2021

In Re:

Legend:

Taxpayer =

Tax Year =

X =

Subsidiaries =

Y =

Accounting Firm =

Dear :

This letter is in reply to a request for a private letter ruling made by Taxpayer. Taxpayer requested an extension of time under sections 301.9100-1(c) and 301.9100-3 of the Procedure and Administration Regulations to file Form 3115, Application For Change in Accounting Method, for Tax Year. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

## FACTS

Taxpayer is a C Corporation that is 100 percent owned by X. Taxpayer states that it files a consolidated Federal income tax return with its wholly owned subsidiaries, Subsidiaries. Through its Subsidiaries, Taxpayer distributes and markets Y. 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 retained the services of Accounting Firm to assist in preparing its consolidated Federal income tax return for Tax Year. Based upon the recommendation of Accounting Firm, Taxpayer decided to file Form 3115 to change two of the methods of accounting for Subsidiaries. The accounting methods would be changed beginning with Tax Year.

The two changes in method of accounting both involved section 263A of the Internal Revenue Code. These changes were to the Simplified Service Cost Method and the Simplified Production Method without the historic absorption ratio election. Both of these changes Taxpayer believed could be made using the automatic consent procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419. Additionally, Taxpayer believed that by making these changes, Subsidiaries would be in full compliance with the rules under section 263A.

Taxpayer has represented that its consolidated Federal income tax return for Tax Year and any subsequent tax year(s) was(were) prepared as if the two accounting method changes had been properly procedurally implemented. However, Taxpayer admits that it failed to procedurally implement the changes properly for Tax Year.

Regarding the filing of the consolidated Federal income tax return for Tax Year, Taxpayer represents that it timely mailed the required copy of Form 3115 to the appropriate office of the Internal Revenue Service (IRS) as required by Rev. Proc. 2015-13. Taxpayer also represents that this return was timely filed. However, Form 3115 was not attached to this tax return.

Upon realizing this mistake, Accounting Firm informed Taxpayer and promptly prepared this request for a letter ruling to obtain an extension of time under sections 301.9100-1(c) and 301.9100-3 to file the missing Form 3115.

## RULING REQUESTED

Taxpayer requests an extension of time for filing the required Form 3115 for Tax Year under sections 301.9100-1(c) and 301.9100-3.

## LAW AND ANALYSIS

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

The requested accounting method changes are regulatory elections as defined under section 301.9100-1(b) because the due date of the changes are prescribed in section 1.446-1 of the Income Tax Regulations and section 6.03(3)(a) of Rev. Proc. 2015 -13.

Section 301.9100-2 provides for automatic extensions of time for making certain elections. Section 301.9100-3 provides for extensions of time for making elections that do not meet the requirements of section 301.9100-2. Taxpayer's request for an extension of time must be analyzed under the requirements of section 301.9100-3 because the automatic provisions of section 301.9100-2 are not applicable.

Requests for relief under section 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 section 301.9100-3(a).

Section 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 IRS;
- (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 IRS; 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.

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 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.

Section 301.9100-3(c)(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 (taking into account the time value of money). 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.

Section 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 be 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

#### CONCLUSION

On the basis of Taxpayer's representations, we conclude that the requirements of sections 301.9100-1(c) and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer to file the original Form 3115 that should have been attached to its consolidated Federal income tax return that was filed for Tax Year. This Form 3115 must be identical to the copy of the Form 3115 that had been filed with the appropriate IRS office. No other revision to the consolidated Federal income tax return filed for Tax Year can be made. This extension shall be for a period of 45 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 the accounting method changes Taxpayer has attempted to make on Subsidiaries' behalf are eligible to be made under the automatic consent procedures of Rev. Proc. 2015-13. Further, no opinion is expressed regarding the correctness of Subsidiaries' Simplified Service Cost Method or Simplified Production Method without the historic absorption ratio election. Lastly, no opinion is expressed regarding the filing of consolidated Federal income tax return by Taxpayer.

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, 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.

Sincerely,

Cheryl L. Oseekey  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: