

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:PSI:6
PLR-121211-05
Date:
June 30, 2005

Re:

Taxpayer =
Date1 =
Date2 =
SB/SE Official =

Dear :

This letter responds to a letter dated March 16, 2005, and supplemental correspondence, submitted by Taxpayer requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a copy of a Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service (IRS) national office.

FACTS

Taxpayer, a partnership, is the owner of depreciable property, which is used in a commercial rental real estate activity. Taxpayer timely filed its Form 1065, U.S. Return of Partnership Income, for the taxable year ending Date1, along with the original of the Form 3115 under Rev. Proc. 2002-9, 2002-1 C.B. 327, for automatic consent of a change in method of accounting for depreciation. However, no copy of this Form 3115, with signature, was filed with the IRS national office until Date2, because Taxpayer's accountant inadvertently failed to file the copy timely.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file a duplicate copy of the signed Form 3115 for the taxable year ending Date1 with the IRS national office.

LAW AND ANALYSIS

Rev. Proc. 2002-9 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of Internal Revenue to change the taxpayer's method of accounting under § 446(e) and the Income Tax Regulations thereunder.

Section 6.02(3)(a) of Rev. Proc. 2002-9 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2002-9 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 IRS national office 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.

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 under § 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 granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, an extension of time is hereby granted for Taxpayer to file the necessary copy of the Form 3115 with the IRS national office. In this regard, we will consider the signed copy of the Form 3115 submitted by Taxpayer to the IRS national office on Date2 as timely filed by Taxpayer for purposes of section 6.02(3)(a) of Rev. Proc. 2002-9.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above. Specifically, no opinion is expressed or implied concerning (i) whether Taxpayer is qualified to file the Form 3115 for the change in method of accounting described above

under Rev. Proc. 2002-9; (ii) whether Taxpayer meets the requirements of that revenue procedure for the Form 3115 described above; or (iii) whether each item of property that is the subject of the Form 3115 described above meets the requirements of Rev. Proc. 2002-9.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative. A copy of this letter is also being sent to the SB/SE Official.

Sincerely,

HEATHER C. MALOY

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter
Copy for section 6110 purposes