

Internal Revenue Service

Number: **200550034**

Release Date: 12/16/2005

Index Number: 446.01-00, 9100.11-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-163425-04

Date:
September 06, 2005

LEGEND:

A =

B =

C =

Date 1 =

Date 2 =

Date 3

Dear _____ :

This ruling replies to the letter and enclosures requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for A to file Form 3115, Application for Change in Accounting Method. This request was made in accordance with § 301.9100-3.

FACTS

A requests an extension of time to file its Form 3115, Application for Change in Accounting Method. A's Form 3115 seeks to make changes in its method of accounting to deduct prepaid expenses, as provided in § 1.263(a)-4(f), and to utilize the recurring item exception under § 1.461-5. A sought to file Form 3115 for this purpose under the provisions of Rev. Proc. 2004-23, 2004-1 C.B. 785. That filing requires three steps to be taken, all on or before the 6-month extended due date for the filing of A's partnership return: (1) making the change on its timely filed partnership return, (2) filing one copy of its Form 3115, prepared in duplicate, with the partnership return, and (3) filing the other copy of its Form 3115 with the IRS National Office, at the address provided for changes under Rev. Proc. 2004-23.

A timely filed its partnership return, which was prepared and assembled by B, on Date 1, the last day of the 6-month extension for its tax year ended Date 2. A represents that on its return, A implemented the requested changes in its methods of accounting to deduct prepaid expenses and to utilize the recurring item exception.

Previously, on Date 3, A filed a copy of its Form 3115, which was prepared by C, with the IRS National Office. However, A did not attach the original of its Form 3115 to its partnership return for the year of change, as required by Rev. Proc. 2002-9, 2002-1 C.B. 327, and Rev. Proc. 2004-23.

Shortly after filing its partnership tax return, A discovered its failure to attach its Form 3115 to its partnership tax return. A contacted B, and soon thereafter, A submitted this request for an extension of time to file.

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 the IRS to change the taxpayer's method of accounting under § 446(e) and the regulations thereunder.

Section 6.01 of Rev. Proc. 2002-9 provides, in part, that consent is granted only to the extent that the taxpayer complies with all the applicable provisions of the revenue procedure and implements the change in method of accounting for the requested year of change.

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.

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

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.

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.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 of the Regulations have been satisfied. Accordingly, an extension of time is hereby granted for A to file the required Form 3115, in accordance with Rev. Procs. 2002-9 and 2004-23. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 3115 when it is filed.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences arising from A's activities. Further, we express no opinion on whether A: 1) is qualified to file the Forms 3115 under Rev. Proc. 2004-23 and Rev. Proc. 2002-9; 2) otherwise meets the requirements of that revenue procedure; and 3) that the requested changes in accounting methods described above meet the requirements of that revenue procedure.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to the partnership's authorized representatives.

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

Sincerely,

GEORGE BAKER
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)