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Dear :

This ruling is in reply to a request submitted by the Taxpayer for an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations, and Rev. Proc. 2007-1, 2007-1 I.R.B. 1 (Jan. 2, 2007), to submit a late Form 3115, Application for Change in Accounting Method, requesting permission for itself and its subsidiaries, B, C, D, and E, to change from an accrual method of accounting to the cash receipts and disbursements method of accounting for federal income tax purposes.

### FACTS

The Taxpayer, a State subchapter S corporation, is an X engaged in Y through its four affiliated qualified subchapter S subsidiaries, B, C, D, and E (collectively “the Qsubs”). The Taxpayer engages in no other business activity of its own. The Taxpayer and its Qsubs maintain complete, separate accounting records as required by regulations, and use an overall accrual method of accounting. The Taxpayer reports federal income tax for itself and its Qsubs on a calendar-year basis.

On Date 1, the Taxpayer instructed its tax representative to prepare Form 3115, requesting permission for itself and its Qsubs to change their method of accounting for federal income tax reporting purposes from an accrual method to the cash method, effective the beginning of Year 1. On Date 2, the Taxpayer’s tax representative delivered a completed Form 3115 and attachments to the Taxpayer so that an authorized officer of the Taxpayer could execute and file the material with the Internal Revenue Service on or before Date 3.

Under ordinary circumstances, there would have been more than enough time for the Taxpayer to file Form 3115 on or before Date 3, the deadline for the Taxpayer to request advance consent for an accounting method change for Year 1. On the evening of Date 2, and well into the following day, however, State suffered the second of two major weather events that paralyzed City and large portions of State and caused the governor to declare a disaster. The intensity of the back-to-back weather events prompted a university climatologist, after researching meteorological records, to describe the situation as “unprecedented.”

Because of the disruption of transportation, the inability of employees to report for work, and the closure of businesses and government facilities, the Taxpayer was unable to obtain a postmark on its Form 3115 until after the filing deadline for requesting permission to change its and its Qsubs’ method of accounting for Year 1. The Taxpayer reviewed and filed the Form 3115 soon after its operations resumed. However, when the Service received the Taxpayer’s application postmarked after Date 3, it rejected the

Taxpayer's Form 3115 as untimely filed. The Taxpayer then filed this request for a letter ruling granting permission under § 301.9100 to file a late Form 3115 to change to the cash method of accounting.

### LAW AND ANALYSIS

Section 446(e) of the Internal Revenue Code and § 1.446-1(e) of the Income Tax Regulations state that except as otherwise provided, a taxpayer must secure the Commissioner's written consent before changing a method of accounting for federal income tax purposes.

Section 1.446-1(e)(3)(i) requires that, in order to obtain the Commissioner's consent to a method change, a taxpayer must file Form 3115 during the taxable year in which the taxpayer desires to make the proposed change. Section 2.04 of Rev. Proc. 97-27, 1997-1 C.B. 680, provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method.

Section 301.9100-3 provides generally for extensions of time to make regulatory elections under sections of the Code other than those for which § 301.9100-2 expressly prescribes automatic extensions. Section 301.9100-3(a) provides in part that the Commissioner will grant a request for an extension of time when a taxpayer provides evidence, including affidavits described in paragraph (e) of the regulation, establishing to the Commissioner's satisfaction that the taxpayer acted reasonably and in good faith, and that granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides in part that except as provided in subparagraphs (b)(3)(i) through (b)(3)(iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer fails to make a timely election because of intervening events beyond its control.

Section 301.9100-3(b)(3) provides in part that a taxpayer is deemed to have not 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 § 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, but chose not to file the election; or (iii) uses hindsight in requesting 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 a 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).

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 ordinarily are 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.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections such as the one in question. The regulation provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if: The accounting method regulatory election for which relief is requested is subject to the requirement in § 1.446-1(e)(3)(i) for advance written consent of the Commissioner; or requires an adjustment under § 481(a) (or would require such an adjustment if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the year in which the election should have been made). Thus, barring unusual and compelling circumstances, the Taxpayer would not receive relief under § 301.9100-3 because the Government's interests are prejudiced by its late filing.

The Taxpayer has shown that it acted reasonably and in good faith. Further, the Taxpayer has shown that because of unusual and compelling circumstances caused by an intervening event beyond the Taxpayer's control, the interests of the Government are not prejudiced by granting the requested relief for an extension of time under § 301.9100-1(c).

#### RULING

Consent is hereby granted to the Taxpayer to file Form 3115, requesting permission to change its own and its Qsubs' method of accounting for federal income tax purposes from an accrual to the cash method, effective Year 1. The Form 3115 that was filed previously by the Taxpayer will thus now be considered by the Service.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this private letter ruling. Specifically, no opinion is expressed or implied regarding whether the requested change in method of accounting will be granted.

This private letter ruling is directed only to the Taxpayer. 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 private letter ruling is being sent to each of the Taxpayer's authorized representatives.

Sincerely,

JEFFERY G. MITCHELL.  
Branch Chief, Branch 6  
Office of Associate Chief Counsel  
(Income Tax & Accounting)