

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:B05/PLR-138764

Date:

January 15, 2003

Re:

Attn:

EIN:

Dear _____ :

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the above-named taxpayer, requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending June 30, to a 52/53-week taxable year ending on the Saturday nearest January 31, effective February 2, 2002. The taxpayer has requested that the Form 1128 be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The taxpayer's Form 1128 requesting a change in accounting period was due on or before April 15, 2002. The information furnished indicates that the application for the change in accounting period was filed late because of an error or misunderstanding. The form was filed, however, within 90 days of the due date.

Section 1.442-1(b) of the Income Tax Regulations, as then in effect, provides that in order to secure the Commissioner's consent to a change in accounting period, the taxpayer must file an application on Form 1128 with the Commissioner (a) on or before the 15th day of the second calendar month following the close of the short period, or (b) if Rev. Proc. 2000-11, 2000-3 I.R.B. 312, is applicable, as in the instant case, on or before the due date (including extensions) for filing the return for the short period required by such change.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Based upon the facts and information submitted and the representations made, it is held that the taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for the granting of relief have been satisfied in this case, and the taxpayer's late-filed Form 1128 requesting permission to change from a taxable year ending June 30, to a 52/53-week taxable year ending on the Saturday nearest January 31, effective February 2, 2002, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any other section of the Code or regulations that may be applicable thereto. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of an examination process.

A copy of this letter ruling and the taxpayer's Form 1128 are being forwarded to where the taxpayer files its federal income tax return with instructions that the Form 1128 be considered timely filed, and processed in accordance with the established procedures under Rev. Proc. 2000-11.

In accordance with the provisions of a power of attorney currently on file, we are also sending a copy of this letter ruling to the taxpayer's authorized representative.

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

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

Copy of this letter

Copy of this letter for § 6110 purposes