

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:4 PLR-143935-03

Date:

September 9, 2003

Legend:

Year 1 =

Year 2 =

Dear _____ :

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the taxpayer (TIN: _____), requesting permission to change its accounting period, for federal income tax purposes, from a 52-53 week tax year ending on the Saturday nearest to December 31 to a 52-53 week tax year ending on the Saturday nearest September 30, effective September 30, Year 1. 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 is a partnership, and its Form 1128 requesting a change in accounting period to a 52-53 week tax year ending on the Saturday nearest September 30, was due on or before April 15, Year 2. The information furnished indicates that the application for the change in accounting period was filed late because of an error or misunderstanding. However, this application for § 301.9100-3 relief was filed within 90 days of the return's due date.

Rev. Proc. 2002-38, 2002-1 C.B. 1037, provides the exclusive procedures for certain partnerships, S corporations, electing S corporation and personal service corporations to obtain automatic approval to change their annual accounting periods under § 442 of the Internal Revenue Code. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of the Internal Revenue Service to change its annual accounting period under § 442 and the Income Tax Regulations thereunder. Section 7.01 of Rev. Proc. 2002-38 provides that a Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) only if it is filed on or before the time (including extensions) for filing the return for the short period required to effect such change.

PLR-143935-03

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 on the 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 granting relief have been satisfied in this case, and the taxpayer's late filed Form 1128 requesting permission to change to a 52-53 week tax year ending on the Saturday nearest September 30, effective September 30, Year 1, is considered timely filed.

Since a change in accounting period under Rev. Proc. 2002-38 is under the jurisdiction of the Director, Internal Revenue Service Center where the taxpayer's returns are filed, we have forwarded the application to the Director, Ogden Service Center. Any further communication regarding this matter should be directed to the Service Center.

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. 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.

This ruling addresses the granting of § 301.9100-3 relief only. No opinion is expressed regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction. Specifically, no opinion is expressed as to whether the taxpayer is permitted under the Code and applicable regulations to change to the tax year requested in the subject Form 1128.

PLR-143935-03

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

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures:

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