

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 - 117424-03

Date: October 2, 2003

Dear _____ :

This letter is in reference to 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 taxable year ending December 31 to a taxable year ending September 30, effective _____.

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 this change was due on or before _____.

The information furnished indicates that the application was filed late because of an error or misunderstanding. However, a letter informing the Internal Revenue Service of the taxpayer's desire to make the change was filed within 90 days after the due date.

Section 1.442-1(b) of the Income Tax Regulations provides that in order to secure the Commissioner's consent to a change in accounting period, the taxpayer must file an application generally on Form 1128 with the Commissioner within such time and in such manner as is provided in the administrative procedures published by the Commissioner.

Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides the exclusive procedures for certain corporations to obtain automatic approval to change their accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b). Section 7.02(2) of Rev. Proc. 2002-37 states 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 due date (including extensions) for filing the federal income tax return for the short period required to effect 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) 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 the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

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Based on the facts and information submitted and the representations made, it is held that the taxpayer has acted reasonably and in good faith, and 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, and the taxpayer's late filed Form 1128 requesting permission to change to a tax year ending September 30 for the short period _____, to _____, is considered timely filed.

The ruling contained in this letter is predicated 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 above material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the examination process.

Except as provided herein no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether the taxpayer is permitted to change to the tax year requested in the subject Form 1128. 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.

The taxpayer indicates that it timely filed its Form 1120 for the short period _____ to _____ with the appropriate service center. The taxpayer further indicates that it is filing the application under Rev. Proc. 2002-37. Accordingly, we are forwarding the application along with a copy of this letter to the appropriate service center for consideration.

Pursuant to a power of attorney on file in this office, a copy of this ruling will be sent to the taxpayer's designated representatives. Enclosed is a copy showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Sincerely,

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

Enclosure