

Internal Revenue Service

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Date: November 10, 2003

Legend

- A =
- B =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear

This is in reply to the private letter ruling request in which taxpayer A has asked for an extension of time to file Form 1128, Application To Adopt, Change, or Retain a Tax Year, requesting permission to change its taxable year, from a taxable year ending September 30 to a taxable year ending December 31, effective Date 1.

Facts

A was sold on Date 2 to B, a newly formed holding company. A consolidated return will be filed for the year ending Date 3, with B as the group's common parent. In anticipation of becoming a member of such group for the year ending on Date 3, A wants to go to a December 31 year end for the taxable year ending Date 2. A's Form 1128 required to effect such change, which was due on Date 4, was not timely filed. Instead, it was postmarked on Date 5. A is thus requesting that it be granted an extension of time to file its Form 1128.

Law and Analysis

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Section 1.442-1(b)(1) of the Income Tax Regulations provides, in part, that in order to secure the approval of the Commissioner to adopt, change, or retain an annual accounting period, a taxpayer must file an application with the Commissioner within such time and in such manner as is provided in administration procedures published by the Commissioner.

Section 6.02(1) of Rev. Proc. 2002-39, 2002-22, I.R.B. 1046, 1055, provides that a taxpayer must file a Form 1128 no later than the due date (not including extensions) of the federal income tax return for the first effective year.

The Commissioner has discretionary authority to grant an extension of time for requesting permission to adopt, retain, or change a tax year. Section 301.9100 of the Procedure and Administration Regulations provides the procedures for requesting an extension. Generally, a request will be granted when the taxpayer submits the Form 1128 within 90 days of the due date and establishes that it acted reasonably and in good faith, and granting relief will not prejudice the interest of the government. Applications submitted beyond 90 days will be presumed to prejudice the interests of the government and, accordingly, denied except in unusual and compelling circumstances.

Conclusion

Based on the facts and circumstances 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 interest 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 to a tax year ending Date 1, effective for the short period Date 5, is considered timely filed.

A copy of this letter ruling and taxpayer's Form 1128 are being forwarded to the service center where the taxpayer files its federal income tax returns with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under Rev. Proc 2002-39.

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.

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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 Internal Revenue 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.

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

Sincerely,

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

Enclosure
Copy of this letter
Copy for § 6110 purposes