

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

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Refer Reply To:

CC:ITA:05 – PLR-144654-03

Date:

January 15, 2004

In Re:

Legend

Taxpayer =

Date 1 =

Corporation Y =

Corporation X =

Dear :

This is in reply to Taxpayer's request for an extension of time to file Form 1128 (Application To Adopt, Change, or Retain a Tax Year) to request permission to change its taxable year, pursuant to the automatic change procedures of Rev. Proc. 2002-38, 2002-1 C.B. 1037. Taxpayer desires to change from a 52-53 week taxable year ending the Saturday nearest to December 31, to a 52-53 week taxable year ending the Saturday nearest to September 30, effective for the short taxable year beginning December 30, 2001, and ending September 28, 2002 (the short period).

Facts

Taxpayer is a partnership. The partners of Taxpayer are members of an affiliated group of corporations (Consolidated Group Y) that file a consolidated federal income tax return. On Date 1, Corporation X indirectly acquired 100% of Corporation Y, the common parent of Consolidated Group Y (the Acquisition). Consolidated Group Y files a separate consolidated return from Corporation X.

Corporation X prepares both financial statements and tax returns on a 52-53 week year ending the Saturday nearest to September 30. Pursuant to the automatic procedures of

Rev. Proc. 2002-37, 2002-1 C.B. 1030, Consolidated Group Y changed its taxable year to coincide with that of Corporation X, effective for the short period.

Prior to the Acquisition, Corporation Y's internal tax department assumed the responsibility for preparing all of the tax returns related to Corporation Y, including that of Taxpayer. After the Acquisition, Corporation X desired to consolidate tax operations. After Corporation Y's tax department prepared tax returns to be filed for the taxable year ending December 29, 2001, for both Consolidated Group Y and Taxpayer, Corporation X's tax department assumed the responsibility for preparing the types of returns previously prepared by Corporation Y's tax department. Most of Corporation Y's tax personnel did not relocate to Corporation X's tax department.

Consistent with a plan to effect a timely change of Taxpayer's taxable year to coincide with that of Consolidated Group Y, Corporation X's tax department timely filed an automatic extension to April 15, 2003, for Taxpayer to file a federal income tax return for the short period. However, because of the change in tax personnel and responsibilities that occurred after the Acquisition, there was an inadvertent failure to file a subsequent extension request to file Taxpayer's income tax return for the short period. Because of this Taxpayer did not file a timely request, pursuant to Rev. Proc. 2002-38, to conform its taxable year to that of Consolidated Group Y. However, Taxpayer did file its request for permission for an extension of time to file Form 1128 within 90 days of April 15, 2003.

#### Law and Analysis

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 administrative procedures published by the Commissioner.

Where certain requirements are met, Rev. Proc. 2002-38 provides the exclusive procedures for a partnership to obtain automatic approval to change annual accounting periods. To make such a change, § 7.02(2) of Rev. Proc. 2002-38 requires the partnership to file Form 1128 with the appropriate service center no later than the due date (including extensions) for filing the federal income tax return of the partnership for the first effective year of change, which in this case is the short period.

Where certain requirements are met, Rev. Proc. 2002-37 provides the exclusive procedures for a corporation to obtain automatic approval to change annual accounting periods. Section 4.02(2) of Rev. Proc. 2002-37 generally prohibits a corporation from using the automatic change procedures if the corporation has an interest in a pass-

through entity at the end of the short period that would be created as a result of the change. However, in certain circumstances, Rev. Proc. 2002-37 disregards the corporation's interest in a pass-through entity. For example, § 4.02(2)(a) of Rev. Proc. 2002-37 ignores an interest in a pass-through entity if the entity would be required under the Code or regulations to change its taxable year to the new taxable year of the corporation. If a corporation's interest in a pass-through entity is disregarded under § 4.02(2)(a) of Rev. Proc. 2002-37, § 6.10 of that revenue procedure requires, as a condition for the corporation to use the automatic change procedures, that the pass-through entity concurrently change its taxable year to that of the corporation. This concurrent change must be made under the applicable automatic change procedure and must be made irrespective of any conflicting testing date provisions under § 706(b)(4)(A)(ii) or the special rule of § 706(b)(4)(B). Section 3.A of Notice 2002-72, 2002-2 C.B. 843.

The Commissioner has discretionary authority to grant an extension of time for requesting permission to adopt, retain, or change a tax year. Section 301.9100-3 of the Procedure and Administration Regulations provides the procedures relevant to Taxpayer requesting an extension. Generally, a request will be granted when the taxpayer establishes that it acted reasonably and in good faith and establishes that granting relief will not prejudice the interests of the government. An application for an extension submitted more than 90 days after the Form 1128 due date 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 as represented, it is held that 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. Therefore, the Taxpayer is granted an extension of time to file Form 1128 under Rev. Proc. 2002-38 to change its taxable year to a 52-53 week taxable year ending the Saturday nearest to September 30, the effective year of change being the short period beginning December 30, 2001, and ending September 28, 2002.

This letter ruling is based upon facts and representations submitted by Taxpayer 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 requested 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 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 Taxpayer is permitted under the Code and applicable regulations to change to the taxable year requested in the subject Form 1128 or whether Taxpayer is permitted to make the change in accordance with Rev. Proc. 2002-38.

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. 2002-38.

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

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,

J. Charles Strickland  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
Branch 05 (Income Tax & Accounting)

Enclosures

Copy of this letter

Copy for § 6110 purposes