

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:05 – PLR-144046-03

Date: January 14, 2004

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 September 30, to an annual accounting period ending December 31, effective for the short period beginning October 1, 2002 and ending December 31, 2002. The taxpayer has requested that the Form 1128 be considered timely filed under the authority contained in section 301.9100-3 of the Procedure and Administration Regulations.

Section 7.02(2) of Rev. Proc. 2002-38, 2002-1 C.B. 1037, provides that a taxpayer must file a Form 1128 no earlier than the day following the end of the first effective year and no later than the due date (including extensions) of the federal income tax return for the first effective tax year. According to the information submitted, the taxpayer did not file an extension for the first effective tax year. Thus, the taxpayer's Form 1128 requesting a change in accounting period to a tax year ending December 31 was due April 15, 2003 but was not timely filed. However, this application for section 301.9100-3 relief was filed within 90 days of the return's due date. The information furnished also indicates that the application for the change in accounting period was filed late because of an error or misunderstanding.

Section 1.442-1(b) of the Income Tax Regulations provides that in order to secure the Commissioner's consent to a change in annual accounting period, the taxpayer must file an application on Form 1128 with the Commissioner within such time and in such manner as is provided in administrative procedures published by the Commissioner. But for a timely filing, the taxpayer's Form 1128 should be subject to the automatic consent procedures of Rev. Proc. 2002-38, 2002-1 C.B. 1037, and due on or before the due date of the return of tax required for the short period.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions), such as the present situation, must be made under the rules of section 301.9100-3. Requests for relief subject to section 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 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 to a taxable year ending December 31, effective for the short period of October 1, 2002 through December 31, 2002, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer, and is limited to the filing of Form 1128. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto. This office has not verified any of the material submitted in support of the requested ruling; verification of factual information, representations, and other data is within the examination jurisdiction of the taxpayer's local IRS director.

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. The taxpayer must file a federal income tax return for the short period necessary to effect the change within 45 days of the date of this ruling. A copy of this ruling should be attached to that return.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this letter ruling to the taxpayers' 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 yours,

/s/ William A. Jackson

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

Enclosures:

Copy of this letter

Copy for section 6110 purposes