

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:ITA:4 – PLR-106613-04

Date:

March 31, 2004

Legend

X -
Date 1 -
Date 2 -
Date 3 -
Date 4 -
Date 5 -

Dear :

This letter ruling is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of X, requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending Date 1 to one ending Date 2, effective Date 3. X has requested that the Form 1128 be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

X's Form 1128 requesting a change in accounting period to a tax year ending Date 2 was due on or before Date 4. The information furnished indicates that the Form 1128 was filed late because of an error or misunderstanding. However, the Form 1128 was filed within 90 days of the due date.

Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides procedures by which certain corporations may obtain automatic approval to change their annual accounting periods under § 442 of the Internal Revenue Code. A corporation 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(2) provides that a Form 1128 filed pursuant to this revenue procedure will be considered timely filed for

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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), such as the present situation, 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 facts and information submitted and the representations made, it is held that X 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, and X's late filed Form 1128 requesting permission to change from a tax year ending Date 2, effective Date 3, is considered timely filed.

Since changes in accounting periods under Rev. Proc. 2002-37 are 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, Cincinnati Service Center. Any further communication regarding this matter should be directed to the Cincinnati Service Center.

The ruling contained in this letter is based upon facts and representations submitted by X 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 or implied 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 or implied as to whether X is permitted under the Code and applicable regulation 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) provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

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

Sincerely,

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

Enclosures (2)