

**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-112998-04

Date:

May 17, 2004

EIN:

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 November 30, to a taxable year ending December 31, effective 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.

The taxpayer's Form 1128 requesting to change its accounting period to a tax year ending December 31, 2002, was due on or before July 15, 2003, but was not timely filed; however, the form was filed shortly thereafter. The information furnished indicates that the late filing was due to an error or misunderstanding.

The information submitted indicates that the taxpayer intended to file Form 1128 on a timely basis. The taxpayer is a partnership and engages in the business of investments. The taxpayer uses an accrual method as its overall method of accounting.

Section 442 of the Internal Revenue Code (the Code) provides that a taxpayer must obtain approval to change its taxable year.

Section 1.442-1(b) of the Income Tax Regulations provides that in order to secure the Commissioner's consent to adopt an accounting period, the taxpayer must file an application on Form 1128 with the Commissioner on or before (a) the 15th day of the second calendar month following the close of the short period or (b), if Rev. Proc. 2002-38, 2002-1 C.B.1037, is applicable, no later than the due date (including extensions) for filing the 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 section 301.9100-2 (automatic extensions), such as the instant case, 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 adopt a tax year ending December 31, effective December 31, 2002, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayers 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 section 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 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 adopt the tax year requested in the subject Form 1128.

A copy of this letter ruling and the 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 the taxpayer's authorized representative.

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

Sincerely,

WILLIAM A. JACKSON  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes