

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-104307-04

Date:

July 26, 2004

Taxpayer =

Year 1 =

Date 1 =

Short Period =

Dear

This letter is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of Taxpayer (TIN _____), requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending October 31 to a taxable year ending June 30, effective June 30, Year 1. The taxpayer has requested that the Form 1128 be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer's Form 1128 requesting this change was due on or before September 15, Year 1. The application was filed on Date 1, which is within 90 days of the due date. The information furnished indicates that the application for 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 accounting period, a taxpayer must file an application generally on Form 1128 with the Commissioner within such time and in such manner as is provided in the administrative procedures published by the Commissioner.

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Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides the exclusive procedures for certain corporations to obtain automatic approval to change their accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b). Section 7.02(2) of Rev. Proc. 2002-37 states that a Form 1128 filed pursuant to Rev. Proc. 2002-37 will be considered timely filed for 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) 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 the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Based on the facts and information submitted and the representations made, it is held that Taxpayer has acted reasonably and in good faith, and 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 Taxpayer's late-filed Form 1128 requesting permission to change to a tax year ending June 30, effective for the Short Period, is considered timely filed.

Taxpayer should prepare a new Form 1128 and file it with the appropriate IRS Service Center in accordance with Rev. Proc. 2002-37. The new Form 1128 should reflect the correct answers to Part II Item 3, and Part III Item 8a and b. The new application should be sent with a cover letter instructing the Service Center to associate the form with the taxpayer's federal income tax return. A copy of this letter should be sent with the cover letter. The submission to the Service Center must be made within 30 days from the date of this letter.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and a penalty of perjury statement executed by an appropriate party. This office has not verified any of the above material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the examination process.

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This ruling only addresses the granting of relief under § 301.9100. 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 or whether the taxpayer is permitted to make the change in accordance with Rev. Proc. 2002-37.

Pursuant to a power of attorney on file in this office, a copy of this ruling will be sent to Taxpayer's designated representative.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely,

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