

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:4 – PLR-133087-04

Date:

September 10, 2004

Legend

Taxpayer =

Dear :

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the taxpayer requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending June 30, to a taxable year ending December 31, effective December 31, 2003. 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.

Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides procedures for certain corporations to obtain automatic approval to change their annual accounting period 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) of Rev. Proc. 2002-37 provides that a Form 1128 filed pursuant to the revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) only if it is filed on or before the time (including extensions) for filing the return for the short period required to effect such change.

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The information furnished indicates that the taxpayer did not file its Form 1128 by the due date of the return for the short period required to effect such change. However, the taxpayer requested an extension of time to file its Form 1128 under § 301.9100-3 soon thereafter.

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 instant case, 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 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 December 31, 2003, is considered timely filed.

Since a change in accounting period under Rev. Proc. 2002-37 is 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, Ogden Service Center. Any further communication regarding this matter should be directed to the Ogden Service Center.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer 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 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 change to the tax year requested in the subject Form 1128, or whether the change may be effected under Rev. Proc. 2002-37.

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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.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

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

Sincerely,

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

Enclosures (2)