

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-145385-04

Date:

Jan 13, 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 September 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 section 301.9100-3 of the Procedure and Administration Regulations.

Section 7.02(2) of Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides that a taxpayer must file a Form 1128 on or before 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 March 15, 2004. The information furnished also indicates that the application for the change in accounting period was filed late because of an error or misunderstanding. However, this application for section 301.9100-3 relief was filed within 90 days of the return's due date.

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 would be subject to the automatic consent procedures of Rev. Proc. 2002-37, 2002-1 C.B. 1030, and due on or before the due date (including extensions) 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 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 from a taxable year ending September 30, to a taxable year ending December 31, effective December 31, 2003, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalties 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 or implied concerning the tax consequences of any other matter. Specifically, no opinion is expressed as to whether the taxpayer is permitted under the Internal Revenue Code and applicable regulations to change to the tax year requested in the subject Form 1128.

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. 2002-37. 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,

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

Enclosures:

Copy of this letter
Copy for section 6110 purposes