

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-152526-04

Date:

March 10, 2005

Legend:

X =

Y =

Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year B =

c =

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 on Date 1, to one ending on 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 Administrative Regulations.

X is in the business of providing services to companies wishing to become a c. Shortly before the due date for filing X's Year B federal income tax return, Y (a disregarded entity for federal income tax purposes owned by Z) purchased X. After the purchase, X wished to change its taxable year to that of Z. In addition, X hired Z's tax advisor as its new tax advisor. Due to these changes, there were miscommunications between X's former tax advisor and its new tax advisor involving X's Year B federal income tax return. Because of the proximity of these changes and miscommunications to the due date of X's Year B federal income tax return, the Form 1128 (and this request for relief) was filed more than 90 days late. Submitted information demonstrates that the late filing was not due to any lack of due diligence or prompt action on X's part.

X qualifies to effect the change in accounting period under the automatic consent procedures of Rev. Proc. 2002-37, 2002-1 C.B. 1030. However, X failed to timely file Form 1128 in accordance with the procedures to change to the tax year ending on Date 3. Consequently, X is requesting that it be granted an extension of time under § 301.9100-3 to file Form 1128 to request a change to a tax year ending on Date 2, effective for the short period ending on Date 3.

Rev. Proc. 2002-37 provides the exclusive procedures for certain corporations to obtain automatic approval to change their annual accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations. Section 7.02(2) provides that a Form 1128 filed pursuant to the revenue procedure will be considered timely 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 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 interest of the government.

Section 301.9100-3(c)(3) provides that the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulation election (other than the election to use the required taxable year under § 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128.

Based on the facts and information submitted and the representations made, we conclude that X has acted reasonably and in good faith. In addition, under these unusual and compelling circumstances, we conclude 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 on Date 1, to one ending on Date 2, effective Date 3, is considered timely filed.

Because changes in accounting period 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, 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 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 section 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 regulations 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.

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

Sincerely,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures