

Internal Revenue Service

Number: **200543032**
Release Date: 10/28/2005
Index Number: 9100.09-00

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-134293-05
Date: July 27, 2005

Taxpayer =
Year =

Dear :

This is in reply to Taxpayer's request that the Service consider its Form 1128, Application to Adopt, Change, or Retain a Tax Year, timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations. Taxpayer filed its Form 1128 to change its accounting period to a taxable year ending December 31, effective December 31, Year. Taxpayer requests to use the automatic consent provisions of Rev. Proc. 2002-37, 2002-1 C.B. 1030.

Rev. Proc. 2002-37 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.

Taxpayer did not file its Form 1128 by the due date of the return for the short period required to effect such change. However, 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, the Service holds that Taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and the Service considers Taxpayer's late filed Form 1128 requesting permission to change to December 31, effective December 31, Year, timely filed.¹

Since the Director, Internal Revenue Service Center, where the taxpayer files its returns has jurisdiction of a change in accounting period under Rev. Proc. 2002-37, we have forwarded the application to the Director, . Please direct any further communication regarding this matter to the Service Center.

This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

This ruling addresses the granting of § 301.9100-3 relief only. The Service expresses no opinion 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, we express no opinion as to whether the Code and applicable regulations or Rev. Proc. 2002-37 permit the taxpayer to change to the tax year requested in the subject Form 1128.

Section 6110(k)(3) provides that this ruling, directed only to the taxpayer requesting it, may not be used or cited as precedent.

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

Sincerely,

Michael J. Montemurro
Acting Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2)

¹ The Service will process the Taxpayer's application for a change in accounting period under Rev. Proc. 2002-37.