

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

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Date:

October 31, 2005

EIN:

Dear _____ :

This letter is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the above-named taxpayer, for permission to adopt an accounting period, for federal income tax purposes, ending November 30, effective November 30, 2004. 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 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.

Section 7.02(2) of Rev. Proc. 2002-39, 2002-1 C.B. 1046, provides that a taxpayer must file a Form 1128 on or before the due date (not including extensions) of the federal income tax return for the first effective tax year. Thus, the taxpayer's Form 1128 requesting to adopt an accounting period, under Rev. Proc. 2002-39, to a tax year ending November 30, 2004, was due on or before February 15, 2005. The information furnished 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 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 and evidence provided, 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 adopt a taxable year ending November 30, effective November 30, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted and evidence provided 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 adopt the tax year requested in the subject Form 1128.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this letter ruling to the taxpayer's 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 Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter
Copy for section 6110 purposes