

Internal Revenue Service

Number: **200625029**

Release Date: 6/23/2006

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-163133-05

Date:

March 15, 2006

Legend

X –

Y –

Date 1 –

Date 2 –

Date 3 –

Date 4 –

Date 5 –

Date 6 –

Year 1 -

Dear

This letter ruling is in reference to X's request that its Form 1128, Application to Adopt, Change, or Retain a Tax Year, be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations. Taxpayer filed a Form 1128 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. Taxpayer's Form 1128 was not, however, timely filed.

X's Form 1128 requesting a change in accounting period for the tax year ending on Date 2 was due on Date 4. In Year 1, X researched procedures to change its accounting period. X had concluded that it would qualify to make the change in accounting period under the automatic provisions of Rev. Proc. 2002-37, 2002-1 C.B. 1030. A Form 1128 filed pursuant to Rev. Proc. 2002-37 is timely if it is filed on or before the time (including extensions) for filing the return for the short period required to effect such change.

In late Year 1, X began investigating the possibility of forming a 50/50 joint venture. After a lengthy period of due diligence and negotiations, Y was incorporated on Date 5. X and Y contributed their respective operations to the joint venture on Date 6 and each

have a 50 percent partnership interest in the joint venture. Y has a taxable year ending on Date 1. Immediately on learning of the possibility that a change in accounting period under the automatic provisions of Rev. Proc. 2002-37 would not apply, and having therefore missed the due date for filing the request to change its tax year, X authorized its representative to file this request for relief.

Rev. Proc. 2002-39, 2002-1 C.B. 1046, provides the general procedures for establishing a business purpose and obtaining the approval of the Commissioner of Internal Revenue to adopt, change, or retain an annual accounting period for federal income tax purposes. Under the revenue procedure, a taxpayer will be granted permission to adopt, change to, or retain an annual accounting period other than a required year if the taxpayer establishes a business purpose for the requested annual accounting period. A Form 1128 filed pursuant to Rev. Proc. 2002-39 is timely if it is filed on or before the time (not including extensions) for filing the 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 interests of the government.

Based on the facts and information submitted and the representations made, it is held that X 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, 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. X's Form 1128 will be processed in accordance with the established procedures under Rev. Proc. 2002-39.

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 representatives.

Sincerely,

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