

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:4

PLR-128541-06

Date: October 4, 2006

Legend:

Taxpayer =

Year =

Dear :

This letter ruling is in reference to Taxpayer's request that its Form 1128, "Application to Adopt, Change, or Retain a Tax Year," be considered timely filed under the authority in § 301.9100-3 of the Regulations on Procedure and Administration. Taxpayer filed a late Form 1128 to change its accounting period, for federal income tax purposes, from a taxable year ending February 28, to a taxable year ending December 31, effective December 31, Year.

Revenue Procedure 2002-37, 2002-1 C.B. 1030, 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. 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) of the Income Tax Regulations only if filed on or before the time (including extensions) for filing the return for the short period required to effect the change.

The information furnished indicates that Taxpayer did not file its Form 1128 by the due date of the return for the short period required to effect the change and did not request an extension to file the return. However, Taxpayer requested an extension of time to file its Form 1128 under § 301.9100-3 shortly after the required time for filing the return.

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, we conclude 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 Taxpayer's late filed Form 1128 requesting to change to December 31, effective December 31, Year, is considered timely filed.¹

Because a change in accounting period under Rev. Proc. 2002-37 is 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,

. The taxpayer should direct any further communication regarding this matter to the Service Center.

This ruling is based upon facts and representations submitted by the taxpayer 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. 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. We express 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, 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 taxpayer is permitted under the Code and applicable regulations to change to the tax year requested in the Form 1128, or whether the change may be effected under Rev. Proc. 2002-37.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 when it is disclosed under § 6110.

¹ The taxpayer's application for a change in accounting period will be processed under Rev. Proc. 2002-37.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Donna Welch
Senior Technician Reviewer
(Income Tax & Accounting)
Office of Chief Counsel