

**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-120179-06

Date:

December 14, 2006

X

Date 1

Date 2

Date 3

Date 4

Date 5

Date 6

Firm C

Firm B

Dear

This ruling letter 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 Regulations on Procedure and Administration. X is 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's Board of Directors approved a change in its fiscal year effective on Date 3 so that its tax year would conform to that of its primary operating subsidiary acquired on Date 4. X uses the services of Firm C for all of its external public reporting, but it did not use Firm C to perform any U.S. tax services.

X filed an extension to extend its tax returns based on the new tax year-end. In Date 5, X engaged Firm B to prepare its consolidated tax return for Date 3. X informed Firm B that it had changed its tax year end to Date 2 and that the income tax return should be prepared. Firm B believed that X and Firm C had already taken all necessary action to effect the change in accounting period, and accordingly, did not prepare Form 1128. The tax returns were prepared using the tax year ending on Date 2. In planning for the preparation of the return for Date 6, Firm B requested a copy of the Form 1128, and

was informed by X that a Form 1128 had not been filed. The Form 1128 and this request for relief were filed more than 90 days late. X contends that it qualifies to effect its change in accounting period under the automatic consent procedures of Rev. Proc. 2002-37, 2002-1 C.B. 1030.<sup>1</sup> The late filing was not due to any lack of due diligence or prompt action on X's part.

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 filed 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.

Based on the facts and information submitted and the representations made, we have concluded that X has acted reasonably and in good faith in this matter. Furthermore, we have determined that the granting of relief in this case will not prejudice the interests of the government under § 301.9100-3(c). Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied, and X's late 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 X's returns are filed, we have forwarded the application to the Director, Ogden Service Center. Please direct any further communication regarding this matter 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.

The 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

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<sup>1</sup> Rev. Proc. 2006-45, 2006-45 I.R.B. 851, which supersedes Rev. Proc. 2002-37, would not apply to X's requested change in accounting period. See section 9 of Rev. Proc. 2006-45.

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 the 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  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure