

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-158287-06

Date: January 17, 2007

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 June 30, to a taxable year ending December 31, effective December 31, Year.

Revenue Procedure 2002-38, 2002-1 C.B. 1037, provides procedures for certain taxpayers to obtain automatic approval to change their annual accounting period under § 442 of the Internal Revenue Code. A taxpayer 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 7.02(2) of Rev. Proc. 2002-38 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 it is 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. However, Taxpayer requested an extension of time to file its Form 1128 under § 301.9100-3 shortly after the required time.

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. <sup>1</sup>

Because a change in accounting period under Rev. Proc. 2002-38 is under the jurisdiction of the Director, Internal Revenue Service Center, where the taxpayer's returns are filed, the Taxpayer should forward its application with a copy of this letter to the Director, within 30 days of the date of this letter. Any further communication regarding this matter should be directed 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 effectuated under Rev. Proc. 2002-38.

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.

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<sup>1</sup> The taxpayer's application for a change in accounting period will be processed under Rev. Proc. 2002-38.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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