

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

In Re:

Refer Reply To:  
CC:ITA:B04  
PLR-108630-07  
Date:  
August 02, 2007

Legend:

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

Month =

City =

Dear \_\_\_\_\_ :

This letter is in reference to a late-filed Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, submitted on behalf of Taxpayer, requesting permission to change its annual accounting period, for federal income tax purposes, from a taxable year ending Date 1 to a taxable year ending Date 2, effective for the tax year ending Date 3. Taxpayer has requested that its Form 1128 be considered timely filed under the

authority contained in § 301.9100-3 of the Regulations on Procedure and Administration.

Taxpayer is a domestic C corporation engaged in the business of a. Taxpayer seeks to change its accounting period in order to coincide with the b, which is held in Month of each year in City.

Taxpayer filed its federal income tax return for the short-period ending Date 3 with its Form 1128 on Date 4, which was less than 90 days after the due date. The information and representations made by Taxpayer and supported by affidavit demonstrate that Taxpayer's failure to file its Form 1128 timely was due to inadvertence. Taxpayer requested relief under § 301.9100-3 more than 90 days after the due date for filing the Form 1128 and before the Service discovered the failure to make the election. Taxpayer asserts that it would qualify to make the accounting period change under the automatic consent procedures of Rev. Proc. 2002-37, 2002-1 C.B. 1030, but for the untimely filing of the Form 1128.<sup>1</sup>

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

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). 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.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Internal Revenue Service will use to determine whether to grant an extension of time to make a regulatory election. 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 changes) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith under § 301.9100-3(b), and that granting relief will not prejudice the interests of the government under § 301.9100-3(c).

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith in this matter. Furthermore, we conclude that the granting of relief in this case will not prejudice the

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<sup>1</sup> Rev. Proc. 2006-45, 2006-45 I.R.B. 851, which supersedes Rev. Proc. 2002-37, does not apply to Taxpayer's requested change in accounting period because Taxpayer's first effective year would end prior to October 18, 2006. See section 9 of Rev. Proc. 2006-45.

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 Taxpayer'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.

We are sending a copy of this letter ruling and Taxpayer's Form 1128 to the service center where Taxpayer files its federal income tax returns, with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under Rev. Proc. 2002-37.

The ruling contained in this letter is based upon facts and representations submitted by 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. 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. We express no opinion regarding the tax treatment of the subject transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto. Specifically, no opinion is expressed or implied as to whether Taxpayer 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) of the Internal Revenue Code provides that it may not be used or cited as precedent. We have enclosed a copy of the letter showing the deletions proposed to be made 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 yours,

Michael J. Montemurro  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes