

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Telephone Number: \_\_\_\_\_, ID No. \_\_\_\_\_

Refer Reply To:  
CC:ITA:B04  
PLR-114622-08  
Date:  
July 16, 2008

Taxpayer	=
EIN	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
CPA Firm	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
X	=

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

This ruling letter 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 contained in § 301.9100-3 of the Regulations on Procedure and Administration.

Taxpayer, a C corporation, wants 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 states that if it had timely filed its Form 1128, it would qualify to effect the change in accounting period under the automatic consent procedures of Rev. Proc. 2006-45, 2006-2 C.B. 851.

On Date 4, CPA Firm, which prepared Taxpayer's tax returns, timely e-filed Form 7004, *Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. When it e-filed the extension, CPA Firm's intention was to timely file both Taxpayer's Form 1120, *U.S. Corporation Income Tax Return*, and its Form 1128.

On Date 5, CPA Firm timely e-filed Taxpayer's Form 1120. However, due to an administrative error relating to the tax software used, the Form 1128 was not included in the Date 5 e-filing.

On Date 6, the X Internal Revenue Service Center mailed Taxpayer a notice confirming the receipt of Taxpayer's Form 1120 but requested clarification of Taxpayer's year end. During the ensuing correspondence with the IRS office, Taxpayer and CPA Firm discovered the error that had occurred when CPA Firm sought to transmit the Form 1128.

On Date 7, Taxpayer filed its Form 1128 with X Service Center. Taxpayer filed its request for relief under § 301.9100-3 on Date 8, which is more than 90 days after the due date of the Form 1120, including extensions. The late filing of Form 1128 was not due to any lack of due diligence or prompt action on Taxpayer's part.

Rev. Proc. 2006-45 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) of Rev. Proc. 2006-45 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 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 in this matter. Furthermore, the granting of relief in this case will not prejudice the interests of the government under § 301.9100-3(c). Accordingly, because the requirements of

§ 301.9100-3 for the granting of relief have been satisfied, Taxpayer'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.

Because changes in accounting periods made under Rev. Proc. 2006-45 are under the jurisdiction of the Director, Internal Revenue Service Center where a taxpayer's returns are filed, we have forwarded a copy of this letter to the X Service Center and have requested that the letter be associated with Taxpayer's Form 1128.

The ruling in this letter is based upon the facts, representations, and affidavits that were submitted by Taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. 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 as to whether Taxpayer is permitted under the Code and the applicable regulations to change to the tax year it requested in its Form 1128 or whether Taxpayer can make the change under Rev. Proc. 2006-45.

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 in our office, we are sending copies of both this letter and the letter showing proposed § 6110 deletions to Taxpayer's authorized representatives.

If you have any questions concerning this letter, please address them to the individual whose name and telephone number appear at the top of this letter.

Sincerely,

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

Enclosure:  
Copy for § 6110 purposes