

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200852028**
Release Date: 12/26/2008
Index Number: 9100.09-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

In Re:

Refer Reply To:
CC:ITA:B5
PLR-135953-08
Date:
September 24, 2008

Dear _____ :

This is in reference to a Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, submitted on behalf of the above-named taxpayer, requesting permission to change its annual accounting period, for federal income tax purposes, from a taxable year ending _____, to a taxable year ending _____, effective for the tax year beginning _____, and ending _____. The taxpayer has requested that the Form 1128 be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The taxpayer represents that the taxpayer's Form 1128 requesting a change in accounting period to a tax year ending _____, was due on or before _____, but was not timely filed. Information furnished indicates that the taxpayer intended to make the change in a timely manner, but through an error or omission, failed to do so in a proper manner. The error was not due to any lack of due diligence or prompt action on the part of Taxpayer, and the taxpayer filed its request for administrative relief shortly after the Form's due date.

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. But for a timely filing, the taxpayer's Form 1128 would be subject to the automatic consent procedures of Rev. Proc. 2006-45, 2006-45 I.R.B. 851, and due on or before the due date (including extensions) of the return of tax required for the short period.

Section 301.9100-3(a) of the regulations 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, it is held that the taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for the granting of relief have been satisfied in this case, and taxpayer's late-filed Form 1128 requesting permission to change to a tax year ending _____, effective for the tax year beginning _____, and ending _____, will be considered timely filed.

A copy of this letter ruling and taxpayer's Form 1128 are being forwarded to the service center where the 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. 2006-45.

The ruling contained in this letter is based upon facts and representations furnished by the taxpayer, and is limited to the filing of Form 1128. Except as specifically addressed herein, no opinion is expressed as to whether the taxpayer qualifies for the automatic consent procedure or regarding the tax treatment of the subject transaction under the provisions of any other sections of the Internal Revenue Code or Income Tax Regulations that may be applicable thereto. This office has not verified any of the material submitted in support of the requested ruling; verification of factual information, representations, and other data is within the examination jurisdiction of the taxpayer's IRS Industry Director.

Copies of this letter ruling are being provided to the taxpayer's authorized representative.

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.

Sincerely yours,

/s/ George F. Wright

George F. Wright
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

- Copy of this letter
- Copy for § 6110 purposes