

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200914006**  
Release Date: 4/3/2009  
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:B04  
PLR-129159-08  
Date:  
December 18, 2008

Taxpayer	=
EIN	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Representative	=

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.

FACTS

Taxpayer, a C corporation, is the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Taxpayer seeks 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. If an extension of time to change its

taxable year is allowed for Taxpayer, its three subsidiaries will automatically change their year-ends to conform to Taxpayer's new year-end.

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, Section 4. Taxpayer has changed its books and records to a year ending on Date 2 and wants its taxable year-end to end on Date 2 also.

On or about Date 4, when Taxpayer and Taxpayer's Representative discussed Taxpayer's anticipated changes for its books and records, Taxpayer directed Representative to take the necessary procedural steps to change Taxpayer's accounting period. In order to effectuate the desired accounting period change automatically, however, Taxpayer was required, by Date 5 (the due date for the short period ending on Date 3), either to: (1) file its Federal income tax return (Form 1120, U.S. Corporation Income Tax Return) and the Form 1128; or to (2) file Form 7004, *Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns*.

Through an administrative oversight of Representative, neither the Form 7004 nor the Form 1128 was filed by Date 5. However, both Taxpayer and Representative had intended the Forms 7004 and 1128 to be timely filed. When Taxpayer learned from its financial auditors that the Form 7004 had not been filed (and that, in consequence, the Form 1128 was untimely), Taxpayer and Representative took prompt action to seek an extension, under § 301.9100-3, to file the Form 1128. Taxpayer's request for 9100 relief was filed on Date 6, which is within 90 days of Date 5 (the due date), and was supported by the affidavits required under § 301.9100-3(e)(2).

#### LAW, ANALYSIS, AND CONCLUSION

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. Further,

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, will be considered timely filed if it is filed with the appropriate Internal Revenue Service office within 60 days of the date of this letter. Please submit the Form 1128, together with a copy of this letter, to Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where Taxpayer files its federal income tax return.

### CAVEATS

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  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes