

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-105752-09

Date:
May 14, 2009

In Re:

LEGEND

Taxpayer =
EIN =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

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 joint venture owned equally by A and B, is engaged in the business of C, principally for sale in D. Taxpayer uses the accrual method of accounting as its overall method of accounting, using a tax year ending on Date 1. However, Taxpayer seeks to change to a tax year ending on Date 2, effective Date 3, in order to achieve administrative efficiencies by conforming its tax year to its financial accounting year.

B, which files all Taxpayer's tax returns, filed a federal income tax return for the short period ending on Date 3. Taxpayer timely filed that tax return on Date 4 and intended to file the Form 1128 on or before its due date of Date 5. Through an inadvertent oversight, however, Taxpayer did not file the Form 1128 until Date 6, less than 2 weeks after the due date. 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.

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 30 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 affidavit that were 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. 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 Taxpayer's submission and the provisions of a power of attorney currently on file in our office, we are sending this letter and a letter showing proposed § 6110 deletions to Taxpayer's authorized representative.

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