

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201004020**
Release Date: 1/29/2010

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 9100.00-00

, ID
Telephone Number:

In Re:

Refer Reply To:
CC:ITA:B04
PLR-130568-09
Date:
October 22, 2009

LEGEND

Taxpayer =

EIN =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

B =
EIN =

Dear :

This ruling letter refers to Taxpayer's request that its Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, be considered timely filed under § 301.9100-3 of the Regulations on Procedure and Administration (regulations).

FACTS

Taxpayer is an S Corporation that is engaged in Business A and uses the accrual method of accounting. Taxpayer's current year ends on Date 1. Taxpayer requests to change its taxable year to a year ending Date 2, effective Date 3. If the change in accounting year is granted, Taxpayer's short year will be from Date 4 to Date 3. Taxpayer's reason for changing its accounting year is to conform to the taxable year of its majority shareholder, B.

Taxpayer did not timely file a Federal income tax return or Form 1128 for the short year. Taxpayer represents that it was unaware of the need to file a Form 1128 until after the due date for the short-year return.

It appears that, but for the late filing of the form 1128, taxpayer would have qualified to use the automatic consent procedures of Rev. Proc. 2006-46, 2006-2 C.B. 859, to effectuate its change in accounting year.

LAW, ANALYSIS, AND CONCLUSION

Rev. Proc. 2006-46 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. 2006-46 provides that a Form 1128 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 year required to effectuate such change.

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 under § 301.9100-3 will be granted if the taxpayer establishes 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 acted reasonably and in good faith. Further, the granting of relief will not prejudice the interests of the government under § 301.9100-3(c).

Accordingly, Taxpayer's late-filed Form 1128 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. Taxpayer should 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 information submitted and the representations made by Taxpayer. This office has not verified the material submitted. Verification of the factual information and representations may be required as part of an examination process.

This ruling addresses only the granting of § 301.9100-3 relief. 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 or whether Taxpayer can make the change under Rev. Proc. 2006-46.

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 when the letter 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 the proposed § 6110 deletions to Taxpayer's authorized representative.

If you have any questions concerning this letter, please contact the individual listed at the top of this letter.

Sincerely,

Donna Welsh
Senior Technician Reviewer,
Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes

cc: