

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-139912-11
Date:
October 11, 2011

Taxpayer:
EIN:
Year:

Dear :

This ruling is in reference to the taxpayer's request that its Form 1128, "Application To Adopt, Change, or Retain a Tax Year," be considered timely filed under the authority in § 301.9100-3 of the Procedures and Administration Regulations. Taxpayer filed a late Form 1128 to change its accounting period, for federal income tax purposes, from a taxable year ending June 30, to a taxable year ending December 31, effective December 31, Year.

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.

Section 6.02(1) of Rev. Proc. 2002-39, 2002-1 C.B. 1046, provides that a taxpayer must file a Form 1128 no earlier than the day following the end of the first effective year and no later than the due date (not including extensions) of the federal income tax return for the first effective year.

Taxpayer did not file its Form 1128 by the due date of the return for the short period (not including extensions) required to effect such change. However, taxpayer requested an extension of time to file its Form 1128 under § 301.9100-3 soon thereafter, at the time the taxpayer determined that for the year of change it failed to meet the Scope provisions of Rev. Proc. 2006-45, 2006-2 C.B. 851.

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. Request 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 interest 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, and that the granting of relief will not prejudice the interest of the government. Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late filed Form 1128 requesting to change to December 31, effective December 31, Year, is considered timely filed.

This ruling is based upon facts and representations submitted by the 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. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

This ruling addresses the granting of § 301.9100-3 relief only. We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other section of the code or the regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction. Specifically, we express no opinion as to whether the Code and applicable regulations or Rev. Proc. 2002-39 permits the taxpayer to change to the tax year requested in the Form 1128.

A copy of this letter ruling must be attached to the taxpayer's income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 it is disclosed under § 6110.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely yours,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)
Office of Chief Counsel