

INTERNAL REVENUE SERVICE
Index Nos.: 9100.09-00
Number: **199927034**
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April 15, 1999

In re:

Dear Mr. :

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 accounting period, for federal income tax purposes, from a taxable year ending [REDACTED] a 52-53-week taxable year ending the [REDACTED]. 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's Form 1128 requesting a change in accounting period to a 52-53-week tax year ending [REDACTED] was due [REDACTED]. The information furnished indicates that the application for the change in accounting period was filed late because of an error or misunderstanding. However, the form was filed within 90 days of the 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 accounting period, the taxpayer must file an application on Form 1128 with the Commissioner on or before the 15th day of the second calendar month following the close of the short period.

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, 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 [REDACTED], effective for the short period of [REDACTED], is considered timely filed.

The taxpayer submitted a \$3,900 user fee. The applicable user fee for an extension ruling and for the change in tax year is \$250 for each. Reference Rev. Proc. 98-1, 1998-1 I.R.B. 8, Appendix A, 63. Accordingly, we are refunding \$3,400 of the \$3,900 user fee. The taxpayer will receive a separate ruling on the change in tax year.

The ruling contained in this letter 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. Verification of the factual information, representations, and other data may be required as part of an examination process.

This ruling addresses the granting of § 301.9100-3 relief only. No opinion is expressed regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction. Specifically, no opinion is expressed as to whether the taxpayer is permitted under the Code and applicable regulations to change to the tax year requested in the subject Form 1128.

In accordance with the provisions of the power of attorney on file with the underlying Form 1128, Application To adopt, Change, or Retain a Tax Year we are sending the original of this ruling letter to the taxpayer's designated representative and a copy to the taxpayer.

U.S. Premium Beef Ltd.

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,

Assistant Chief Counsel
Income Tax and Accounting

/s/ Irwin A. Leib

By _____
Irwin A. Leib
Deputy Assistant Chief Counsel

Enclosures:

Copy of this letter
Copy for § 6110 purposes