

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05 – PLR-170792-03

Date:

February 10, 2004

EIN:

LEGEND:

Date X:

Y:

Dear \_\_\_\_\_ :

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 December 31, to a taxable year ending May 31, effective for the tax year beginning January 1, 2003, and ending May 31, 2003.

According to the information submitted, the taxpayer's Form 1128 requesting a change in accounting period to a tax year ending May 31, 2003 was due August 15, 2003 because the taxpayer did not file an extension for the first effective year. However, the taxpayer filed its request on Date X, Y days after the due date for filing the Form 1128.

The taxpayer has requested that the Form 1128 be considered timely filed under the authority contained in section 301.9100-3 of the Procedure and Administration Regulations. The information furnished indicates that the application for the change in

accounting period was filed late because of an error or misunderstanding. But for a timely filing, the taxpayer's Form 1128 would be subject to the automatic consent procedures of Rev. Proc. 2002-37, 2002-1 C.B. 1030.

Section 7.02(2) of Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides that a taxpayer must file a Form 1128 on or before the due date (including extensions) of the federal income tax return for the first effective tax 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 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions), such as the present situation, must be made under the rules of section 301.9100-3. Requests for relief subject to section 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.

Section 301.9100-3(c) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(3) provides that the interests of Government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128, Application to Adopt, Change, or Retain a Tax Year (or other required statement).

Based on the facts 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 the taxpayer's late filed Form 1128 requesting permission to change from a taxable year ending December 31, to a taxable year ending May 31, effective May 31, 2003, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalties 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 section 301.9100-3 relief only. No opinion is expressed or implied concerning the tax consequences of any other matter. Specifically, no opinion is expressed as to whether the taxpayer is permitted under the Internal Revenue Code and applicable regulations to change to the tax year requested in the subject Form 1128.

A copy of this letter ruling and taxpayer's Form 1128 are being forwarded to the service center where the taxpayer files its federal income tax returns with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under Rev. Proc. 2002-37. The taxpayer must file a federal income tax return for the short period necessary to effect the change within 45 days of the date of this ruling. A copy of this ruling should be attached to that return.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this letter ruling to the taxpayers' authorized representative.

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.

Sincerely,

/s/

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

Enclosures:

Copy of this letter  
Copy for section 6110 purposes