

**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:05 – PLR-158878-03

Date:

April 15, 2004

In Re:

EIN:

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 June 30, to a taxable year ending December 31, effective December 31, 2001. 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 submitted indicates that the taxpayer intended to file Form 1128 on a timely basis. The taxpayer is a domestic corporation and engages in the business of oil and gas exploration and production. The taxpayer uses an accrual method as its overall method of accounting.

Section 442 of the Internal Revenue Code provides that a taxpayer must obtain approval to change its taxable 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 accounting period, the taxpayer must file an application generally on Form 1128 with the Commissioner within such time and in such manner as is provided in the administrative procedures published by the Commissioner. Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides the exclusive procedures for certain corporations to obtain automatic approval to change their accounting period under § 442 of the Internal Revenue Code and § 1.442- 1(b). Section 7.02(2) of Rev. Proc. 2002-37 states that a Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) 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. Accordingly, the taxpayer's Form 1128 requesting a change in accounting period to a tax year ending December 31 was due on or before September 15, 2002. Due to an error or misunderstanding, however, the form was not filed until more than 90 days beyond its due date. Submitted information demonstrates that the late filing was not due to any lack of due diligence or prompt action on the part of the taxpayer.

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 subject to § 301.9100-3 will be granted where evidence establishes that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Requests for relief involving a change in accounting period that are filed more than 90 days beyond the due date for filing Form 1128 will be deemed to prejudice the interests of the government, except in unusual and compelling circumstances.

Based on the facts and information submitted and the representations made, we have determined that the taxpayer demonstrated unusual and compelling circumstances in respect of this matter. In addition, granting of relief to this taxpayer 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 June 30, to a taxable year ending December 31, effective December 31, 2001, is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer, and is limited to the filing of Form 1128. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto. This office has not verified any of the material submitted in support of the requested ruling; verification of factual information, representations, and other data is within the examination jurisdiction of the taxpayer's local district director.

A copy of this letter ruling and the 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.

In accordance with the provisions of a power of attorney currently on file with this office, the original of this letter ruling is being sent to the taxpayer's authorized representative, and a copy is being sent to the taxpayer.

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,

WILLIAM A. JACKSON  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purposes