

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

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Date: July 21, 2004

Taxpayer =
Year =

Dear :

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the taxpayer, requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending August 31, to a taxable year ending December 31, effective December 31, Year. 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.

Rev. Proc. 2002-37, 2002-1 C.B. 1030, provides procedures for certain corporations to obtain automatic approval to change their annual accounting period under § 442 of the Internal Revenue Code. A corporation complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of the Internal Revenue Service to change its annual accounting period. Section 7.01(2) of Rev. Proc. 2002-37 provides that a Form 1128 filed pursuant to the revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) only if it is filed on or before the time (including extensions) for filing the return for the short period required to effect such change.

The information furnished indicates that the taxpayer did not file its Form 1128 by the due date of the return for the short period required to effect such change. Furthermore, the taxpayer did not request an extension of time to file its Form 1128 under § 301.9100-3 until more than 90 days after the due date of the Form 1128.

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

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relief will not prejudice the interests of the government. Under § 301.9100-3(c)(3), the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if the late-filed election is an accounting period regulatory election (other than a § 444 election) and the request for relief is filed more than 90 days after the due date for the Form 1128.

In the present case, the taxpayer's request for relief under § 301.9100-3 was filed more than 90 days after the due date for the Form 1128. Further, the taxpayer has presented no unusual and compelling circumstances either for filing the application beyond the 90-day period or for the requested relief. Thus, granting the requested relief would prejudice the interests of the government and the taxpayer's request for an extension of time to file Form 1128 is denied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer. 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 in the letter when it is disclosed under § 6110.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel

(Income Tax & Accounting)

cc: