

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-145589-04

Date:

September 09, 2004

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 January 31, effective for the tax year beginning _____, and ending _____. 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 tax year ending _____, was due on or before _____, but was not timely filed; however, the form was filed shortly thereafter. Information furnished indicates that the late filing was due to an error or misunderstanding.

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. 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, and due on or before the due date (including extensions) of the return of tax required for the short period.

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 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 a tax year ending January 31, effective for the tax year beginning January 1, 2004, is considered timely filed.

The ruling contained in this letter is based upon facts and representations furnished 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 IRS Industry Director.

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

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.

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,
/s/ William A. Jackson
WILLIAM A. JACKSON
Chief, Branch 5
Associate Chief Counsel
(Income Tax and Accounting)

Enclosures:

Copy of this letter
Copy for § 6110 purposes