

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:4

PLR-148722-04

Date:

Legend:

X –  
Date 1 –  
Date 2 –  
Date 3 –  
Date 4 –

Dear

This letter is in reply to your request for a private letter ruling under § 301.9100-1 of the Procedure and Administrative Regulations. In the request, X has asked for an extension of time to file a Form 1128, Application to Adopt, Change, or Retain a Tax Year, requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending on Date 1, to one ending Date 2, effective Date 3. X has requested that the Form 1128 be considered timely filed under the authority contained in § 301.9100-3.

X's Form 1128 requesting a change in accounting period to a tax year ending Date 3 was due on or before Date 4. Due to an error or misunderstanding, the Form 1128 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.

Rev. Proc. 2003-37, 2002-1 C.B. 1030, provides procedures by which certain corporations may 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 under § 442 and the Income Tax Regulations thereunder. Section 7.01(2) provides 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.

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. Further, § 301.9100-3(c)(3) provides that the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if, as in the present case, the election is an accounting period regulatory election and the request for relief is filed more than 90 days after the due date for filing Form 1128.

Based on the facts and information submitted and the representations made, it is held that X has established unusual and compelling circumstances, 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 X's late filed Form 1128 requesting permission to change from a tax year ending on Date 2, effective Date 3, is considered timely filed.

Since changes in accounting period under Rev. Proc. 2002-37 are under the jurisdiction of the Director, Internal Revenue Service Center where the taxpayer's returns are filed, we have forwarded the application to the Director, Ogden Service Center. Any further communication regarding this matter should be directed to the Ogden Service Center.

The ruling contained in this letter is based upon facts and representations submitted by X 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 or implied regarding the tax treatment of the instant transaction under the provisions of any other section 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 or implied as to whether X is permitted under the Code and applicable regulations to change to the tax year requested in the subject Form 1128.

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. Enclosed is a copy of the letter

ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this letter to the taxpayer's authorized representatives.

Sincerely,

Robert A. Berkovsky  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures

Copy of this letter

Copy for § 6110 purposes