

§ 301.9100-3 to file Form 1128 to request a change to a tax year ending on Date 2, effective for the short period ending on Date 3.

Rev. Proc. 2002-38 provides the exclusive procedures for certain partnerships, S corporations, electing S corporations, and personal service corporations to obtain automatic approval to adopt, change, or retain their annual accounting periods under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations. Section 7.02(2) provides that the Form 1128 must be filed no later than the day following the end of the first effective year and no later than the due date (including extensions) for filing the federal income tax return for the first effective year.

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 interest of the government.

Based on the facts and information submitted and the representations made, it is held that X 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 has been satisfied in this case, and X's late filed Form 1128 requesting permission to change from a tax year ending on Date 1, to one ending on Date 2, effective Date 3, is considered timely filed.

Since changes in accounting period under Rev. Proc. 2002-38 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, Cincinnati Service Center. Any further communication regarding this matter should be directed to the Cincinnati 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 representative.

Sincerely,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)