Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos.: 9100.09-00

Person to Contact:

199901031

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:06//PLR-113747-98

Date:
OCT 14 1998

EIN:
Attn:

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 fiscal year ending October 31, to a calendar year ending December 31, effective for the tax year beginning November 1, and ending December 31, 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 December 31 was due on or before March 15, Information furnished indicates that the taxpayer intended to make the change in a proper manner; however, due to an error or misunderstanding, the change was not correctly made. The subsequent late filing of the application was not due to any lack of due diligence or prompt action on the part of the taxpayer.

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 on Form 1128 with the Commissioner on or before (a) the 15th day of the second calendar month following the close of the short period or (b), if Rev. Proc. 92-13, 1992-1 C. B. 665 is applicable, as in the instant case, 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. Requests for relief filed more than 90 days beyond the due date for filing Form 1128 will be approved only in unusual and compelling circumstances.

Based on the facts and information submitted and the representations made, we have determined 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 calendar tax year, 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 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. 92-13.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel
(Income Tax and Accounting)

By Irwin A. Leib
Irwin A. Leib
Deputy Assistant Chief Counsel

Enclosures:
Copy of this letter
Copy for § 6110 purposes