Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos.: 9100.09-00

Person to Contact: 199903047

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:06//PLR-114538-98

Date:
OCT 20 1998

SSN:

Dear Taxpayers:

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of the above-named taxpayers, husband and wife, requesting permission to change their accounting period, for federal income tax purposes, from a fiscal year ending June 30, to a calendar year ending December 31, effective for the tax year beginning July 1, 1995. The taxpayers have 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, 1995, was due on or before the last day of January, 1996. Information furnished indicates that the taxpayers intended to make the change in a timely and 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 taxpayers.

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, a taxpayer must file an application on Form 1128 with the Commissioner as provided therein. Rev. Proc. 66-50, 1966-2 C.B. 1260, provides an "expeditious consent" procedure for individuals meeting the requirements described therein, to change their accounting periods from fiscal to calendar tax years. Such applications may be filed with the Internal Revenue Service Center where the taxpayer's federal income tax returns are filed, on or before the last day of January following the short period affected by the change.

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 taxpayers have 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 taxpayers, 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 taxpayers file their federal income tax returns with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under Rev. Proc. 66-50. We will associate a copy of the application with the return filed for the short period, as required in section 3 of Rev. Proc. 66-50. Applications processed under Rev. Rul 66-50 do not require a separate "user fee". Accordingly, $250 of the "user fee" you submitted will be refunded.

This ruling is directed only to the taxpayers 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,

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