Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos.: 9100.09-00

Person to Contact:

199909055

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:06//PLR-113798-98

Date:

Dec 3, 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 taxpayers,

(hereinafter together referred to as the "taxpayer"), requesting permission to change its accounting period, for federal income tax purposes, from a taxable year ending November 30, to a taxable year ending December 31, effective for the tax year beginning December 1, 1997. The taxpayer intends to elect S corporation status for the tax year immediately following the short period, i.e., commencing with the tax year beginning January 1, 1998, and 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 February 15, 1998. Information furnished indicates that the taxpayer intended to make the change in a timely and proper manner, but that due to an error or misunderstanding, the form was not timely filed. However, the form was filed shortly after the due date, and the information furnished shows that the late filing 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 the 15th day of the second calendar month following the close of the short period.

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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 December 31, effective for the tax year beginning December 1, 1997, is considered timely filed.

Pursuant to Rev. Proc. 93-23, 1993-1 C.B. 538, an additional user fee is required in order to process the Form 1128. The user fee will be requested in a separate correspondence. We will begin processing the taxpayer's application after the user fee is submitted.

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

A copy of this letter ruling is being sent to the taxpayer's district director. In accordance with the provisions of a power of attorney currently on file with this office, the original of this ruling is being sent to the taxpayer's authorized representative, and a copy is being furnished to the taxpayer.

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,

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