

INTERNAL REVENUE SERVICE  
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March 3, 1999

EIN:

Attn:

Dear

This is in reference to a request filed on behalf of the above-named taxpayer regarding the late filing of a Form 1128, Application to Adopt, Change, or Retain a Tax Year. The form would request permission to change accounting periods, for federal income tax purposes, from a taxable year ending March 31, to a taxable year ending December 31, effective for the tax year beginning April 1, 1997. The taxpayer has requested that such a late-filed 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 September 15, 1998. Information furnished indicates that the taxpayer intended to file the form on a timely basis, but that due to error or misunderstanding, the form was not timely filed. Upon discovery of the oversight, and within 90 days of the due date of the Form 1128, the taxpayer requested the late-filing relief sought herein. The information submitted also shows that the failure to timely file the form 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.

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 Form 1128 requesting permission to change to a tax year ending December 31, effective for the tax year beginning April 1, 1997, will be considered timely filed if filed with the taxpayer's service center within 45 days of the date of this letter ruling.

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 is being forwarded to the service center where the taxpayer files its federal income tax returns, with instructions that the taxpayer's Form 1128, if filed in accordance with the relief granted herein, be considered timely filed, and processed in accordance with established procedures under Rev. Proc. 92-13. A copy of this letter ruling should be attached to the form when filed.

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)

/s/ Irwin A. Leib  
By \_\_\_\_\_  
Irwin A. Leib  
Deputy Assistant Chief Counsel

Enclosures:

Copy of this letter  
Copy for § 6110 purposes