

INTERNAL REVENUE SERVICE

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CC:ITA:B9/PLR-117843-00

September 26, 2000

In re:

Dear :

This is in reference to a Form 1128, Application to Adopt, Change, or Retain a Tax Year, submitted on behalf of (the taxpayers), requesting permission to change their accounting period, for federal income tax purposes, from a taxable year ending , to a taxable year ending , effective . 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 taxpayers informed the national office that they did not timely file a Form 1128 to change their tax year. However, the taxpayer filed a request for extension under § 301.9100 to file a Form 1128 within 90 days of the due date.

This ruling letter is based upon a representation by the taxpayers that they are not using hindsight, as defined in § 301-9100-3(b)(3)(iii) in requesting relief.

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. Section 6.01(2) of Rev. Proc. 2000-11 states, in part, that a Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442-1 (b)(1) if and only if, it is filed on or before the time (including extensions) for filing the return for the short period required by such 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.

Based on the facts and information submitted and the representations made, it is held 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 the late filed Form 1128 requesting permission to change to a tax year ending effective , is considered timely filed.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayers 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 taxpayers are 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 and the Form 1128 are being forwarded to the service center where the taxpayers file their consolidated federal income tax returns with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under Rev. Proc. 2000-11.

In accordance with the provisions of a power of attorney currently on file, we are sending this letter ruling to the taxpayers' authorized representative. A copy this letter is also being sent to the taxpayer.

This ruling is directed only to the taxpayers 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,
Associate Chief Counsel
(Income Tax and Accounting)
/s/ Heather C. Maloy

Enclosures:

Copy of this letter
Copy for § 6110 purposes