Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos.: 9100.09-00

Person to Contact: 199903046

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:06//PLR-113708-98

Date:
OCT 20 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, to a taxable year ending September 30, effective for the tax year beginning January 1, 1997. The taxpayer is currently employing a tax year ending September 30, having made an election under section 444 of the Code to have a tax year other than a required tax year, but wishes to demonstrate a natural business year ending on this date. 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 September 30 was due on or before November 15, 1997. Information furnished indicates that the taxpayer intended to make the change in a proper and timely manner, but that due to an error or misunderstanding, the form was not timely filed. The information furnished also 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.

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 involving a change in accounting period that are filed more than 90 days beyond the due date of Form 1128 are granted 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 tax year ending September 30, effective for the tax year beginning January 1, 1997, is considered timely filed.

Pursuant to Rev. Proc. 93-23, 1993-1 C.B. 538, a 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.

In accordance with a power of attorney currently on file with this office, a copy of this letter ruling is being sent to the taxpayer's authorized representative.

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