

Internal Revenue Service

Department of the Treasury

September 19, 2002

Number: **200309001**

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Index Nos.: 9100.09-00

CC:ITA:4 - PLR-140747-02

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, from a taxable year ending March 31, to a taxable year ending December 31, effective December 31, 2001. 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 indicates that its Board of Directors voted in April 2002, to change its accounting year end to December 31 to better reflect income due to the seasonal nature of its business activity. Pursuant to this vote, the taxpayer advised its accounting firm to audit its books and records for the December 31 tax year end and to make all tax elections necessary to reflect the change in tax year. An extension of time to file the tax return was filed. On June 17, 2001, the taxpayer's outside tax advisors prepared and filed Form 1128 to effect the December 31 tax year end.

Rev. Proc. 2000-11, 2000-1 C.B. 309, provides procedures by which certain corporations may obtain automatic approval to change their annual accounting periods under § 442 on the Internal Revenue Code. A corporation complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of the Internal Revenue Service to change its annual accounting period under § 442 and the Income Tax Regulations thereunder. Section 6.02(1) of the revenue procedure provides that a Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) only if it is filed on or before the due date (including extensions) for filing the federal income tax return for the short period required to effect such change.

Section 301.9100-3(a) 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 the taxpayer's late filed Form 1128 requesting permission to change to a tax year ending December 31, effective for the short period of April 1, 2001, to December 31, 2001, is considered timely filed.

Since changes in accounting period under Rev. Proc. 2002-11 are under the jurisdiction of the Director, Internal Revenue Service Center, where the taxpayer's returns are filed, we have forwarded the application to the Director, Fresno Service Center. Any further communication regarding this matter should be directed to the Fresno Service Center.

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.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/ Robert A. Berkovsky

Robert A. Berkovsky  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)