

November 20, 2002

Number: **200309014**  
Release Date: 2/28/2003  
Index Nos.: 9100.09-00  
CC:ITA:4 - PLR-135125-02

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 December 31, to a taxable year ending October 31, effective October 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's Form 1128 requesting a change in accounting period to a tax year ending October 31, 2001 was due on or before January 15, 2002. The information furnished indicates that the application for the change in accounting period was filed late due to an increased demand of personnel during a major event that was held where taxpayer conducts its business. However, the form was filed within 90 days of the due date.

Rev. Proc. 2002-37, 2002-22 I.R.B. 1030, 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 7.01(2) 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 October 31, effective for the short period of January 1, 2001 to October 31, 2001, is considered timely filed.

Since changes in accounting period under Rev. Proc. 2002-37 are under the jurisdiction of the Director, Internal Revenue Service where the taxpayer's returns are filed, we have forwarded the application to the Director, Ogden Service Center. Any further communication regarding this matter should be directed to the Ogden 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.

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

/s/ Michael J. Montemurro  
Michael J. Montemurro  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for § 6110 purposes