

**Internal Revenue Service**

November 4, 2002

Number: **200310004**  
Release Date: 3/7/2003  
Index Nos.: 9100.09-00  
CC:ITA:BR05//PLR-144620

Attn:

Legend

Date A        =  
Date B        =  
CPA            =

Dear                :

This is in response to your request for a private letter ruling regarding the late filing of 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 annual accounting period, for federal income tax purposes. The taxpayer is requesting permission to change its annual accounting period from a taxable year ending May 31 to a taxable year ending December 31, effective Date A. 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 is the common parent of a consolidated group that adopted a May 31, tax year end. The taxpayer decided that December 31 would be a more appropriate year-end for its business and sought to change its tax year. It communicated its intent to change its tax year to CPA. The taxpayer relied on the CPA to prepare and file its Form 1128. The taxpayer's Form 1128 was due on Date B. The taxpayer's Form 1128 was never prepared and thus never filed. The taxpayer unaware of this omission, nevertheless filed its tax returns on its new tax year. The taxpayer has represented that it had satisfied all the regulatory and administrative procedural requirements necessary to make the change automatically.

Section 1.442-1(b) of the Income Tax Regulations, as then in effect, provided 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 an automatic revenue procedure is applicable, as in the instant case, on or before

the due date (including extensions) for filing the return for the short period required to effect 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 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 December 31, effective for the tax year beginning Date A, will be considered timely filed.

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 may be required as part of an examination process.

A copy of this letter ruling and taxpayer's Form 1128 are being forwarded to the service center where the taxpayer files its federal income tax returns with instructions that the Form 1128 be considered timely filed, and processed in accordance with established procedures under the automatic revenue procedure applicable to the taxpayer. In accordance with the provisions of a power of attorney currently on file with this office, a copy of this letter is being sent to the taxpayer's designated representatives.

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,  
William Jackson  
Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for § 6110 purposes