

**Internal Revenue Service**

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In Re:

Department of the Treasury  
Washington, DC 20224

Third Party Communication:  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CCITA:04  
PLR-107814-08

Date:  
August 05, 2008

Dear \_\_\_\_\_ :

This letter is in reference to the request by \_\_\_\_\_ (Taxpayer) that its Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, be considered timely filed under the authority contained in § 301.9100-3 of the Regulations on Procedure and Administration.

In \_\_\_\_\_, Taxpayer was a newly formed partnership and timely filed its initial federal income based on a taxable year ending \_\_\_\_\_, which is its required taxable year under § 706(b) of the Internal Revenue Code. We note that Taxpayer's adoption of a \_\_\_\_\_ year was proper because \_\_\_\_\_ is the taxable year end used by \_\_\_\_\_, a C corporation that owns an interest in partnership profits and capital of more than 50 percent.

An IRS Service Center subsequently sent Taxpayer a letter stating it had no record of receiving a Form 1128 and suggesting that Taxpayer seek an extension of time to file the form under § 301.9100-3. Taxpayer then promptly filed its request for § 301.9100-3 relief.

We wish to inform you, as a matter of general information, that Taxpayer, as a newly formed partnership, does not need the Commissioner's approval to adopt its required taxable year of \_\_\_\_\_, and therefore does not need to file Form 1128 to adopt that year. Instead, Taxpayer properly adopted the required taxable year by filing its first federal income tax return using that year. See §§ 1.441-1(b)(2), 1.441-1(c), and 1.706-1(b)(2) of the Income Tax Regulations and § 2.02 of Rev. Proc. 2006-46, 2006-2 C.B. 859.

Accordingly, we decline to rule on Taxpayer's request for relief under § 301.9100-3 because the relief is not needed. Taxpayer's user fee will be refunded in separate correspondence. See § 15.10 of Rev. Proc. 2008-1, 2008-1 I.R.B. 1.

We are forwarding by fax a copy of this letter to the Service Center, which has informed us that it has accepted Taxpayer's return adopting a taxable year ending on

In accordance with the provisions of a power of attorney currently on file in our office, we are sending a copy of this letter to Taxpayer's authorized representative.

If you have any questions concerning this letter, please address them to the individual whose name and telephone number appear at the top of this letter.

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)