

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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CC:ITA:B08

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Date:

December 16, 2025

**LEGEND**

Taxpayer =

Advisor =

Tax Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

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

This letter responds to Taxpayer's request dated Date 1, seeking a private letter ruling granting relief to make a late election pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 1128, *Application to Adopt, Change or Retain a Tax Year*, to adopt a taxable year ending on Date 2, effective for Year 1.

**FACTS**

Taxpayer's Form 1128 electing a taxable year ending Date 2 for Year 1 was due on or before Date 3. Taxpayer engaged Advisor, a qualified tax professional, to file Taxpayer's federal tax return for Year 1. Due to a misunderstanding of the due date for Taxpayer's Year 1 tax return, Advisor did not file by Date 3. The error was not due to any lack of due diligence or prompt action on the part of Taxpayer. Taxpayer filed its federal tax return, including the Form 1128, on Date 4. As part of its review, Taxpayer realized the mistake and subsequently filed this request on Date 1, which was less than 90 days after Date 3, the missed deadline for timely filing Taxpayer's Form 1128.

Rev. Proc. 2006-45 provides the time and manner for a taxpayer within its scope to change its accounting period. Therefore, such a change is a regulatory election as defined § 301.9100-1(b).

## LAW AND ANALYSIS

Section 441(a) of the Internal Revenue Code provides that taxable income is computed on the basis of the taxpayer's taxable year. Section 441(b) and § 1.441-1(b)(1) of the Income Tax Regulations provide that the term "taxable year" generally means the taxpayer's annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year.

Section 441(e) provides that in the case of any taxpayer who has made the election provided by subsection (f), the term fiscal year means the annual period (varying from 52 to 53 weeks) so elected.

Section 441(f)(1) provides, in general, that a taxpayer may elect to compute its taxable income on the basis of a fiscal year which varies from 52 to 53 weeks, ends always on the same day of the week, and ends always on (A) whatever date this same day of the week last occurs in a calendar month, or (B) whatever date this same day of the week falls which is nearest to the last day of the calendar month.

Section 442 provides that if a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary.

Section 4.01 of Rev. Proc. 2006-45 provides that a change to a 52-53 week taxable year may be an automatic accounting period change, provided the requirements of Rev. Proc. 2006-45 are met. Section 7.02(2) of Rev. Proc. 2006-45 provides that taxpayer must file a form 1128 no earlier than the day following the first effective year (generally, the short period required to make the change), and no later than the due date (including extensions) for filing the tax return for the first effective year.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in section 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3 sets forth standards that the Commissioner will employ in determining whether to grant discretionary relief in situations that do not meet the requirements of § 301.9100-2. The standards applied are whether the taxpayer acted reasonably and in good faith in the matter, and whether the granting of relief will

prejudice the interests of the government. Generally, a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, and that professional failed to make, or advise the taxpayer to make, the election at issue.

Section 301.9100-3(c)(1)(i) states that the interests of the Government are prejudiced if granting relief will result in the affected Taxpayers, in the aggregate, having a lower tax liability in the aggregate for all years to which the election applies than if the election had been made on a timely basis. Section 301.9100-3(c)(1)(ii) provides that relief ordinarily will not be granted if the tax year in which the regulatory election should have been made, or any tax year that would have been affected by the election had it been timely made, is closed by the statute of limitations on assessment before the Taxpayer's receipt of the ruling granting 9100 relief.

Section 301.9100-3(c)(3) provides that the interests of the Government are deemed prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government.

Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Consequently, the Form 1128 attached to Taxpayer's return for Year 1, filed Date 4, is considered timely filed. Because a change of period under Rev. Proc. 2006-45 is under the jurisdiction of the Director, Internal Revenue Service Center, where Taxpayer's returns are filed, we have forwarded the application to the Director, Ogden, Utah Service Center. Any further communication regarding this matter should be directed to the Service Center.

Except for the specific ruling above, which is restricted to the filing of Form 1128, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code or regulations that may be applicable thereto. This letter ruling is based on facts and representations provided by Taxpayer and its authorized representative, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions not specifically addressed herein.

This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Erika C. Reigle  
Acting Branch Chief, Branch 8  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: