

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200430007**

Release Date: 7/23/04

Index Number: 9100.00-00, 0444.03-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:05 – PLR-107403-04

Date:

April 14, 2004

In Re:

Dear :

This is in response to a request filed on behalf of the above-named taxpayer regarding the late filing of its Form 8716, Election To Have a Tax Year Other Than a Required Tax Year. The taxpayer requests that the Form 8716 be considered timely filed under authority contained in section 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayer intended to file Form 8716 on a timely basis. The taxpayer is a partnership and engages in the business of data entry. The taxpayer engaged a qualified tax professional to ensure proper filing of all necessary forms. However, due to an error or misunderstanding on the part of the tax professional, the Form 8716 was filed late. The late filing was not caused by any action on the part of the taxpayer.

Section 444 of the Internal Revenue Code provides that a partnership, S corporation or a personal service corporation may elect to have a taxable year other than its required taxable year.

Section 1.444-3T(b)(1) of the temporary Income Tax Regulations provides, among other requirements, that the Form 8716 must be filed by the earlier of (i) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the section 444 election.

Sections 301.9100-1 of the Procedure and Administration Regulations set forth rules respecting the granting of extensions of time for making certain elections. Under section 301.9100-1 of the temporary regulations, the Commissioner in his or her

discretion may grant a reasonable extension of time to make a regulatory election under Subtitle A, provided the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections, including elections to use other than the required tax year under section 444. If the provisions of section 301.9100-2 do not apply to the taxpayer's situation, as in the instant case, the provisions of section 301.9100-3 (Other extensions) may apply.

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 section 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 where 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.

The information submitted and representations furnished by the taxpayer and its tax professionals establish that the taxpayer acted reasonably and in good faith in respect of this matter. Furthermore, we have determined that the granting of relief in this case will not prejudice the interests of the government within the intent of section 301.9100-3(c). Accordingly, the requirements of section 301.9100-3 of the regulations for the granting of relief in this instance have been satisfied.

This ruling is conditioned on the taxpayer complying with section 1.7519-1T(a)(2) of the temporary regulations, which provides, in relevant part, that for each taxable year that a partnership has an election under section 444 in effect, the partnership must (i) file a return as provided in section 1.7519-2T(a)(2), and (ii) make any required payment as provided in section 1.7519-2T.

This ruling is limited to the filing of Form 8716. Except to the extent 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.

A copy of this letter and taxpayer's Form 8716 are being forwarded to the service center where the taxpayer files its returns with instructions that the taxpayer's Form 8716 be considered timely filed.

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) provides that it may not be used or cited as precedent.

Sincerely,

WILLIAM A. JACKSON
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purposes