

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:5 PLR-131070-02

Date:

December 16, 2002

### Legend

Company:

Shareholder:

a:

b:

c:

d:

e:

Dear :

This letter responds to your letter dated March 13, 2002, submitted on behalf of Company, requesting that Company's Form 8716 be considered timely filed under the authority of § 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that Company, incorporated on a, historically employed a tax year ending b. It elected under § 1362(a) of the Internal Revenue Code to be treated as an S corporation effective c. As an S corporation, Company's required tax year is the calendar year; however, Shareholder intended that Company retain its previous C corporation tax year ending b. Company's Form 8716 electing to use a tax year ending b was due on or before d, but there is no evidence that the form was filed by that date. The information furnished shows that Company intended to make the election and to file Form 8716 on a timely basis, and had engaged a qualified tax

professional in order to assure a proper filing. However, due to an error or misunderstanding on the part of the tax professional, there is no evidence that the form was timely filed. The error was not due to any lack of due diligence or prompt action on the part of Company.

Section 1.444-3T(b)(1) of the temporary Income Tax Regulations provides, among other requirements, that Form 8716 must be filed by the earlier of (i) the 15<sup>th</sup> day of the fifth month following the month that includes the first day of the tax 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 § 444 election.

Section 301.9100-1 set forth rules respecting the granting of extensions of time for making certain elections. Under these rules, the Commissioner in his 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 § 444. If the provisions of § 301.9100-2 do not apply to the taxpayer's situation, as in the instant case, the provisions of § 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 § 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 Company and its tax professionals establish that it 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 intendment of § 301.9100-3(c)(1). Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied.

Within 45 days of the date of this ruling, Company should file with its appropriate IRS Service Center a Form 8716 electing to use a tax year ending b, effective for its first tax year beginning c, and ending e. A copy of this letter ruling should accompany such submission, and Company should type or print at the top of the form: "Filed Under § 301.9100-3 of the Regulations."

This ruling is further conditioned on Company complying with § 1.7519-1T(a)(2), which provides, in relevant part, that for each tax year that an S corporation has an election under § 444 in effect, the corporation must (i) file a return as provided in § 1.7519-2T(a)(2), and (ii) make any required payment as provided in § 1.7519-2T.

Except for the specific ruling above, which is restricted to the filing of Form 8716, 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. Specifically, we express or imply no opinion regarding the eligibility of Company to have elected under § 1362(a) to be an S corporation.

Under a power of attorney on file with this office, we are sending the original of this letter to you and a copy to Company.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/ William A. Jackson

WILLIAM JACKSON  
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Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosure: copy for § 6110 purposes