

INTERNAL REVENUE SERVICE
UIL Index Nos.: 9100.09-00
0444.03-00

Number: **199926029**
Release Date: 7/2/1999

CC:DOM:IT&A:06/PLR-103508-99

April 5, 1999

RE: Form 8716
EIN:

Dear :

This is in response to a request filed on behalf of the above-named taxpayer regarding the late filing of a Form 8716, Election To Have a Tax Year Other Than a Required Tax Year. The taxpayer has requested an extension of time for making such an election under authority contained in section 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayer, a partnership, began business on March 19, 1997. Although taxpayer filed a return of tax for the short tax year ending December 31, 1997, taxpayer's "required taxable year" under section 706 of the Internal Revenue Code ("Code") is March 31. Taxpayer intended to elect a tax year other than its required tax year, under the provisions of section 444 of the Code. The taxpayer's Form 8716 electing such a year was due on or before August 15, 1997, but was not filed by that date. However, the information furnished shows that the taxpayer intended to make the election on a timely basis, but that due to error or misunderstanding, the election was not properly made. The error was not due to any lack of due diligence or prompt action on the part of the taxpayer.

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 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 these rules, 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.

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 intendment of section 301.9100-3(c)(1). Accordingly, the requirements of section 301.9100-3 of the regulations for the granting of relief have been satisfied.

Therefore, the taxpayer is hereby granted an extension of time to file Form 8716 so as to effect a first taxable year ending December 31, 1997. Within 45 days of the date of this letter, the taxpayer must file the required Form 8716, together with a copy of this letter ruling, with the service center where its federal income tax return is filed.

This ruling is also 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 ruling is being sent to the taxpayer's district director.

In accordance with the provisions of a power of attorney currently on file with this office, copies of this letter ruling are being sent to the taxpayer's authorized 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 by other taxpayers.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

/s/ Irwin A. Leib

By _____
Irwin Leib
Deputy Assistant Chief Counsel

Enclosures:

Copy of this letter
Copy for §6110 purposes