

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:ITA:B04

PLR-153833-05

Date:

January 20, 2006

Legend:

X =

Date 1 =

Date 2 =

Date 3 =

Dear

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

Information submitted indicates that X, a limited liability corporation taxed as a partnership, was organized on Date 1. X's Form 8716 was due on Date 2, but was not filed by that date. However, the information furnished indicates that the taxpayer intended to file Form 8716 on a timely basis, and engaged a qualified tax professional in order to assure a proper filing. Due to an error or misunderstanding on the part of the tax professional, the Form 8716 was not timely filed. The error was not due to any lack of due diligence or prompt action on the part of X.

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 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 election under § 444 of the Internal Revenue Code.

Section 301.9100-1 sets 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 X and its tax professional establish that X 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 intentment of § 301.9100-3(c)(1). Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied.

X is hereby granted an extension of time to file Form 8716, so as to effect a first taxable year ending Date 3. Within 60 days of the date of this ruling, X 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 X complying with § 1.7519-1T(a)(2), which provides, in relevant part, that for each taxable year that X has an election under § 444 in effect, X 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 or regulations that may be applicable thereto. This letter ruling is based on facts and representations provided by X 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.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with X's permanent records.

In accordance with the provisions of a power of attorney currently on file with this office, a copy of this letter ruling is being sent to X's authorized representative.

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

Sincerely,

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