

**Internal Revenue Service**

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**Department of the Treasury**

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:IT&amp;A:6 - PLR-107734-99

Date: May 17, 1999

Attn:

Re: Late filing of Form 8716

EIN:

Legend:

Officer =

Date A =

Date B =

Date C =

Specific =

\$Amount =

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 this election under authority contained in §301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayer, a limited liability corporation organized on , is treated for federal income tax purposes as a partnership. The taxpayer's Form 8716 was due Date B, but was not filed. However, the information furnished shows that the taxpayer intended to comply with the requirements of §444 of the Internal Revenue Code and engaged a firm of qualified tax professionals to ensure a proper filing. Due to an error or misunderstanding on the part of the tax professionals, the taxpayer did not file Form 8716. The error was not due to any lack of due diligence or prompt action on the part of the taxpayer.

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Section 1.444-3T(b)(1) of the temporary Income Tax Regulations provides, among other requirements, that Form 8716 must be filed with the appropriate Service Center 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.

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 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 §444. If the provisions of §301.9100-2 do not apply to the taxpayer's situation, as in this case, the provisions of §301.9100-3 may apply.

Section 301.9100-3 sets forth standards that the Commissioner will employ when determining whether to grant discretionary relief in situations that do not meet the requirements of §301.9100-2. These standards 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 and representations furnished by the taxpayer and its qualified tax professionals establish that the taxpayer acted reasonably and in good faith in this matter. Furthermore, we have determined that granting relief in this case will not prejudice the interests of the government within the meaning of §301.9100-3(c)(1).

Accordingly, under §301.9100-3, the taxpayer is granted an extension of time to file Form 8716 to adopt a taxable year ending Date C. The taxpayer has 45 days from the date of this letter to file the following items with the Service Center: (1) Form 8716, (2) copy of this letter ruling, and (3) a check for the amount of the payment required under §1.7519-1T(a)(2). Section 1.7519-1T(a)(2) provides in relevant part that for each taxable year that a partnership has an election under §444 in effect, the partnership 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. We understand that on or about March 12, 1999, the Service Center issued a refund check to the taxpayer in the amount of \$ , representing amounts that the taxpayer had paid with its Forms 8752, Required Payment or Refund Under Section 7519. To comply with §1.7519-

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1T(a)(2), the taxpayer may return the Federal Government's uncashed check if the amount of the required payment does not exceed .

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, 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) 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 A. Leib  
Deputy Assistant Chief Counsel

Enclosures:

Copy of this letter

Copy for §6110 purposes