

Internal Revenue Service

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Refer Reply To:

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Date:

February 17, 2004

Legend

A =

Date 1 =

Date 2 =

Date 3 =

Dear :

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

The information submitted indicates that A, a limited liability corporation was created and began operations on date 1. At that time, A engaged a qualified tax professional to prepare the necessary forms for the startup of the business as well as tax returns, with a date 2 fiscal year end. A filed its first tax return for the fiscal year ended date 3 and assumed that the election to have a fiscal year end was properly handled by its accountants. 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 A.

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 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 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 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 if 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 A and its tax professionals establish that A 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.

Therefore, A is hereby granted an extension of time to file Form 8716, so as to effect a first taxable year ending on Date 3. 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 § 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 § 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.

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 director of Internal Revenue Service. 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(j)(3) provides that it may not be used or cited as precedent by other taxpayers.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)