

INTERNAL REVENUE SERVICE

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September 20, 2001

Re: - Form 8716

EIN:

Dear Taxpayer:

This is in response to a request filed on behalf of the above-named taxpayers regarding the late filing of a Form 8716, Election To Have a Tax Year Other Than a Required Tax Year. The taxpayers have requested that their late-filed Form 8716 be considered timely filed under authority contained in section 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayers (hereinafter taxpayer), parent and subsidiaries, are members of an affiliated group of corporations that files a consolidated return of tax for federal income tax purposes. Taxpayer is principally engaged in providing architectural, engineering, and related professional consulting services, and had historically employed a taxable year ending August 31, for federal income tax purposes. During its tax year ending August 31, 1999, taxpayer satisfied the definitional requirements of a personal service corporation, and was required to change to a taxable year ending December 31, effective for its tax year beginning September 1, 1999 (unless it first established a business purpose for utilizing a different tax year, or elected under section 444 to utilize a tax year other than the required calendar tax year).

Taxpayer's Form 8716 electing to use a taxable year ending September 30 was due on or before December 15, 1999, but was not filed by that date. However, the information furnished shows 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, however, the Form was not timely filed. Submitted information indicates that 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. 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 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 intentment 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.

A copy of this letter and taxpayer's Form 8716 filed in connection with this ruling request are being forwarded to the service center where the taxpayer files its returns of tax, with instructions that the form be considered timely filed and processed so as to affect a taxable year ending September 30, effective for taxpayer's taxable year beginning September 1, 1999, and ending September 30, 1999.

An electing personal service corporation must comply with

the minimum distribution requirements of section 280H for each year a section 444 election is in effect. If the personal service corporation does not meet these requirements, the applicable amounts it may deduct for payments made to employee-owners may be limited.

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 also being sent to the taxpayer's IRS 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,
JAMES ATKINSON
Deputy Associate Chief Counsel
Income Tax & Accounting

Enclosures:

Copy of this letter
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