

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:B05-PLR-128964-02

Date:

January 30, 2003

EIN:

TYE:

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. Taxpayer has requested that its late-filed Form 8716 be considered timely filed under authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that Taxpayer was incorporated on October 1, 1972. Taxpayer was a subchapter "C" corporation from the date of its incorporation until October 1, 2000. Taxpayer timely filed IRS Form 2553, electing S corporation status effective as of October 1, 2000. As an S corporation, Taxpayer's required tax year is the calendar year; however, Taxpayer intended to retain its C corporation historical tax year ending September 30. While the Form 2553 did indicate that Taxpayer intended to use a tax year ending September 30, the form did not state Taxpayer's intention to make the § 444 election. Taxpayer's Form 8716 electing to use a taxable year ending September 30 was due on or before March 15, 2001 but it was not filed by that date.

The information furnished shows that Taxpayer intended to make the election and to file Form 8716 on a timely basis, and had engaged a qualified tax professional in order to assure a proper filing. However, due to an error or misunderstanding on the part of the tax professional, the form was not timely filed. 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

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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 § 444 election. Section 1.444-3T(b)(3)(i) requires that a corporation electing to be an S corporation must state on the Form 2553 its intention to make a § 444 election.

Section 301.9100-1 of the Procedure and Administration Regulations 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 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 Taxpayer and its tax professionals establish that 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 §301.9100-3(c)(1). Accordingly, the requirements of § 301.9100-3 of the regulations for the granting of relief have been satisfied.

Accordingly, under section 301.9100-3, Taxpayer is granted an extension of time to file Form 8716 to adopt a taxable year ending September 30. The taxpayer has 45 days from the date of this letter to file the following items with the Service Center: (1) Form 8716; (2) a copy of this letter ruling; and (3) a return as provided in § 1.7519-2T(a)(2) of the temporary

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regulations, along with any required payment due for the taxable year ending September 31, 2001, 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.

Copies of this letter ruling are also being sent to the IRS Operating Division, and, in accordance with the provisions of a power of attorney currently on file with this office, to the Taxpayer's authorized representative.

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

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

Copy of this letter

Copy of this letter for § 6110 purposes

cc: