

INTERNAL REVENUE SERVICE

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November 6, 2000

Attn:

Re: Late Filing of Form 8716
EIN:

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 that its 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 taxpayer was incorporated on September 14, 1998, and has elected S corporation status effective as of that date. As an S corporation, the taxpayer's required tax year is the calendar year; however, the taxpayer intended to elect a tax year ending September 30. The taxpayer's Form 8716 electing to use a taxable year ending September 30 was due on or before December 15, 1998, but was not filed by that date. The information furnished shows that the 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 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 professional establishes 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 so as to effect a tax year ending September 30, effective for taxpayer's first taxable year ending September 30, 1998.

This ruling is conditioned on the taxpayer complying with section 1.7519-1T(a)(2) of the temporary regulations, which provides, in relevant part, that for each taxable year that an S corporation has an election under section 444 in effect, the corporation must (i) file a return as provided in section 1.7519-2T(a)(2), and (ii) make any required payment as provided in section 1.7519-2T. Taxpayer submissions indicate that it had no business activities for the short period ending September 30, 1998, and that the Form 8752 and required payment under section 7519 due on May 15, 2000, were timely filed/made.

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 taxpayer's district director 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 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,
Associate Chief Counsel
(Income Tax & Accounting)
By James Atkinson, Acting
Deputy Associate Chief Counsel

Enclosures:

Copy of this letter
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