

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200527003**

Release Date: 7/8/2005

Index Number: 9100.09-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-102188-05

Date:

March 31, 2005

Taxpayer =
X =
Y =
Z =

Dear :

This refers to a request filed on behalf of 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.

Formed on X, Taxpayer, a partnership, represents that it filed Form 8716 electing to use a taxable year ending Y, effective Z, on a timely basis and that it has consistently filed Form 1065, U.S. Return of Partnership Income, and Form 8752, Required Payment or Refund Under Section 7519, on a Y year-end. However, the service center where the taxpayer files its return has no record of receiving Taxpayer's Form 8716.

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, -2, and -3 set forth rules respecting the granting of extensions of time for making certain elections. 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, 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 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. Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election are closed by the period of limitations on assessment.

The information submitted and representations furnished by Taxpayer and its tax professional establish that the taxpayer acted reasonably and in good faith in respect to this matter. Furthermore, we have determined that the granting of relief will not prejudice the interests of the government within the meaning of § 301.9100-3(c)(1). Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied.

A copy of this letter and Taxpayer's Form 8716 electing to use a taxable year ending Date Y should be forwarded to the service center where Taxpayer files its returns of tax within 45 days of the date of this letter. A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling, which is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

Enclosure (2)