

Internal Revenue Service

Department of the Treasury

Number: **200326022**
Release Date: 6/27/2003
Index Nos.: 9100.09-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:4 PLR-106353-03

Date:

March 14, 2003

Dear _____ :

This is in response to a request filed on behalf of the taxpayer (TIN: _____), an S corporation, 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 § 301.9100-3 of the Procedure and Administration Regulations.

The taxpayer's Form 8716 electing to use a taxable year ending October 31 was not filed by the due date. The taxpayer intended to file Form 8716 on a timely basis, and engaged a qualified tax professional in order to assure a proper filing. However, the form was not timely filed due to an error or misunderstanding. The error was not because of 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 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 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 present situation, 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

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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 the taxpayer and its tax professionals establish that the taxpayer acted reasonably and in good faith in respect to this matter. Furthermore, we have determined that the granting of relief in this case will not prejudice the interests of the government within the meaning of § 301.9100-3(c)(1). Accordingly, the requirements of § 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. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

This ruling is limited to the granting of relief under § 301.9100-3. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

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

Sincerely,

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

Enclosure