

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04 PLR-116610-04

Date:

May 12, 2004

Legend

Taxpayer =

Date X =

Date Y =

Dear _____ :

This is in response to a request filed on behalf 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 is an S corporation that was incorporated on Date X. Taxpayer engages in the distribution of software.

Taxpayer's Form 8716 electing to use a taxable year ending Date Y, was not filed by the due date. However, Taxpayer intended to file Form 8716 on a timely basis and engaged qualified tax professionals to assure a proper filing. Due misunderstandings between the tax professionals, however, Taxpayer did not timely file the form. The error was not due to any lack of due diligence or prompt action on Taxpayer's part.

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 § 444 election.

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 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 (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 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 under § 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 30 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.

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 any provisions of the Code or regulations.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures
Copy of this letter
Copy for § 6110 purposes