

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-110072-06

Date:

March 16, 2006

Taxpayer =

Year =

Dear :

This letter 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.

Taxpayer elected S Corporation status, requesting a September 30 tax year-end. However, Taxpayer did not timely file a Form 8716, electing to use a taxable year ending September 30, effective September 30, Year. Taxpayer relied on a qualified tax professional to assure a proper and timely filing of the Form 8716. The qualified tax professional, however, did not timely file the Form 8716.

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

Taxpayer filed Form 1120S, U.S. Income Tax Return for an S Corporation, for the tax year ending September 30, Year. Taxpayer also timely filed Form 8752, Required Payment or Refund Under Section 7519, for its year ending September 30, Year.

Section 1.444-3T(b)(1) of the temporary Income Tax Regulations provides that, among other requirements, 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.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

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 relief in situations that do not meet the requirements of § 301.9100-2. Relief will be granted under this section if the taxpayer acted reasonably and in good faith in the matter, and the grant of relief will not prejudice the interests of the government. See § 301.9100-3(b) and (c).

Under § 301.9100-3(b) a taxpayer generally 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 Taxpayer and its qualified tax professionals establish that Taxpayer acted reasonably and in good faith in respect of this matter. In addition, because Taxpayer filed Form 1120S and Form 8752 based on a taxable year ending September 30 and made all payments required under § 7519, the granting of relief in this case will not prejudice the interests of the government. Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied. Therefore, Taxpayer's Form 8716 will be treated as timely filed if it is filed within 45 days of the date of this letter with the Internal Revenue Service Center where Taxpayer files its returns of tax.

A copy of this letter and Taxpayer's Form 8716 electing to use a taxable year ending September 30, effective September 30, Year, must be filed within 45 days of the date of this letter with Internal Revenue Service Center where Taxpayer files its returns of tax. A copy of this letter must be attached to any income tax return to which it is relevant. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110 of the Internal Revenue Code.

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 letter. For example, the grant of the extension of time to file Form 8716 is not a determination that Taxpayer is otherwise eligible to make the election to have a taxable year ending September 30, effective September 30, Year. See § 301.9100-1(a).

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.

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.

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,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)