

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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, ID No.

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Refer Reply To:  
CC:ITA:B05  
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Date:  
January 23, 2008

Taxpayer:

Year:  
Date 1:  
Date 2:

Dear :

This ruling is in reference to the taxpayer's request that a certain Form 8716, Election To Have a Tax Year Other Than a Required Tax Year, be considered timely filed under the authority in § 301.9100-3 of the Procedures and Administration Regulations.

Taxpayer's Form 8716 electing to retain a taxable year ending November 30 was due on or before Date 1, but was not filed by that date. However, 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. Due to an error or misunderstanding, however, 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 15<sup>th</sup> day of the fifth month following the month that includes the first day of the tax 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 set 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 interest 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 interest of the government. Generally, a taxpayer will be deemed to have acted reasonably and in good faith where, for example, 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 tax professionals establish that 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 interest of the government within the intentment 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 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 so as to affect a taxable year ending November 30, effective for taxpayer's taxable year beginning December Year, and ending Date 2.

This ruling is based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This ruling is also conditioned on Taxpayer complying with § 1.7519-1T(a)(2), which provides, in relevant part, that for each tax year that an S corporation has an election under § 444 in effect, the corporation must (i) file a return as provided in § 1.7519-2T(a)(2), and (ii) make any required payment as provided in § 1.7519-2T.

Except for the specific above, which is restricted to the filing of Form 8716, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code or regulations that may be applicable thereto.

In accordance with the provisions of a power of attorney currently on file with this office, a copy of this letter ruling is being sent 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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

Sincerely yours,

George F. Wright  
Senior Technician Reviewer, Branch 5  
(Income Tax & Accounting)  
Office of Chief Counsel

cc: