

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

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CC:ITA:B05

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Date:

February 24, 2023

Taxpayer =
State =
Advisor =
\$x =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =
Year 3 =

Dear _____ :

This letter responds to Taxpayer’s request dated Date 1, seeking a private letter ruling granting relief to make a late election pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8716, *Election to Have a Tax Year Other Than a Required Tax Year*, to adopt a taxable year ending on Date 3, effective for Year 1.

FACTS

Formed on Date 2, Taxpayer is a limited liability company organized under the laws of State. Taxpayer is classified as a partnership for U.S. Federal income tax purposes and was formed for the purpose of leasing real property to a related party.

Taxpayer represents that it intended to adopt a taxable year ending Date 3. Taxpayer informed Advisor that Taxpayer would have a Date 3 year end and instructed Advisor to file its return with this taxable year.

Advisor was not aware of the need to file Form 8716, nor the need to file Form 8752, *Required Payment or Refund Under Section 7519*, to effectuate a tax return year end other than the required tax year. Since Advisor was unaware of the need to file these two forms, Advisor failed to advise Taxpayer of the need to file forms 8716 or 8752.

Taxpayer has timely filed Forms 1065 on a year end consistent with its intent, and the members have reported the income/loss on their individual tax returns consistently. The Taxpayer also timely filed Form 8752 for Year 2 and Year 3. Upon the filing of the Form 8752 on Date 4 and payment of \$x, for Year 3, the Taxpayer has paid and is current with the Required Payments under Section 7519. The Taxpayer did not file the Form 8752 for Year 1. It is the Taxpayer's intent to file Form 8752 for Year 1 upon a favorable ruling.

On Date 5, the Taxpayer received Letter 3916C from the Internal Revenue Service (IRS), notifying the Taxpayer that the IRS did not have a record of the Form 8716 being filed and therefore, could not process the Form 8752 for Year 2. Taxpayer asked Advisor why the form was rejected by the IRS. Advisor reviewed its files and determined that Advisor failed to file the Form 8716 and Form 8752 for Year 1. Advisor responded to the notice to the IRS that the Advisor failed to file Form 8716, and that Taxpayer would submit a Private Letter Ruling Request to resolve the issue. The Taxpayer intends to file Forms 8716 and 8752 for the Year 1 upon a favorable ruling.

LAW AND ANALYSIS

Section 441(a) provides that taxable income is computed on the basis of the taxpayer's taxable year. Section 441(b) and section 1.441-1(b)(1) of the Income Tax Regulations provide that the term "taxable year" generally means the taxpayer's annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year. In the case of a partnership, the required taxable year is the taxable year determined under section 706 and section 1.706-1. Section 1.441-1(b)(2)(i)(G).

Under section 706(b)(1)(B)(i), a partnership's required taxable year is the majority interest taxable year defined in section 706(b)(4), unless the taxpayer elects under section 444 to use a taxable year other than its required taxable year. Section 706(b)(4) provides, in general, that the majority interest taxable year is the taxable year (if any) which, on each testing day, constitutes the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

Section 1.706-1(b)(7) provides, in relevant part, that a newly-formed partnership may adopt, in accordance with section 1.441-1(c), its required taxable year or a taxable year elected under section 444 without the consent of the Commissioner.

Section 444(a) provides that, except as otherwise provided in section 444, a partnership may elect to have a taxable year other than its required taxable year. Section 444(b)(1)

and (2) provide that an election under section 444(a) may be made only if the deferral period of the taxable year elected is not longer than the shorter of three (3) months or the deferral period of the taxable year being changed. The term "deferral period" generally refers to the number of months between the beginning of the entity's taxable year and the close of the first required taxable year ending within such taxable year. Section 444(b)(4).

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.

Sections 301.9100-1 through 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 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in section 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

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.

Regulation section 301.9100-3(c)(1)(i) states that the interests of the Government are prejudiced if granting relief will result in the affected Taxpayers, in the aggregate, having a lower tax liability in the aggregate for all years to which the election applies than if the election had been made on a timely basis. Regulation section 301.9100-3(c)(1)(ii) provides that relief ordinarily will not be granted if the tax year in which the regulatory election should have been made, or any tax year that would have been affected by the election had it been timely made, is closed by the statute of limitations on assessment before the Taxpayer's receipt of the ruling granting 9100 relief.

Section 7519 -- "Required payments for entities electing not to have required taxable year" -- applies to a partnership or S corporation for any taxable year if (1) an election under section 444 is in effect for the taxable year and (2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds \$500. Section 7519(b) defines the required payment. The term "required payment" means, with respect to any applicable election year of a partnership or S

corporation, an amount equal to (1) the excess of the product of (A) the applicable percentage of the adjusted highest section 1 rate, multiplied by (B) the net base year income of the entity, over (2) the net required payment balance. For purposes of paragraph (1)(A), the term "adjusted highest section 1 rate" means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government.

Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. A copy of this letter and Taxpayer's Form 8716 electing to use a taxable year ending Date 3 effective for Year 1 and accompanying Form 8752 should be forwarded to the service center where Taxpayer files its returns of tax within 60 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 based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

This ruling 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 faxed to your authorized representative.

Sincerely,

John M. Aramburu
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: