

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200518057**

Release Date: 5/6/2005

Index Number: 9100.09-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:05 – PLR-156012-04

Date:

January 07, 2005

Dear _____ :

This letter responds to your authorized representative's letter and submissions of May 3, 2004, requesting on your behalf a private letter ruling that a certain Form 8716, *Election To Have A Tax Year Other Than a Required Tax Year*, be considered timely filed under the authority of ' 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer=s Form 8716 electing to use a taxable year ending September 30 was due on or before March 15, 2002, but was not filed by that date. However, the information furnished shows that 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 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 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 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, 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 interests of the government within the intendment of ' 301.9100-3(c)(1). Accordingly, the requirements of ' 301.9100-3 for the granting of relief have been satisfied.

Within 45 days of the date of this ruling, Taxpayer should file with the IRS Cincinnati Service Center (Attn: Entity Control) a Form 8716 electing to use a tax year ending September 30, effective for its first taxable year ending September 30, 2002. A copy of this letter ruling should accompany such submission, and Taxpayer should type or print at the top of the form: ΔFiled Under ' 301.9100-3 of the Regulations.@

This ruling is further conditioned on Taxpayer complying with ' 1.7519-1T(a)(2), which provides, in relevant part, that for each tax year that a partnership has an election under ' 444 in effect, the partnership 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. The information furnished indicates that Taxpayer has complied with these requirements.

Except for the specific ruling 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, the ORIGINAL of this letter ruling is being sent to the Taxpayer's authorized representative, and copies are being furnished to the Taxpayer.

This ruling is directed only to the taxpayer that requested it. Under ' 6110(k)(3) of the Code, this ruling may not be used or cited as precedent by other taxpayers.

Sincerely,

/s/ William A. Jackson

WILLIAM JACKSON
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures:

Copy of this letter

Copy for § 6110 purposes