Internal Revenue Service

Number: **200545014**
Release Date: 11/10/2005
9100.09-00, 444.03-00

Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
CC:ITA:05
Telephone Number:

In Re:

Refer Reply To:
PLR-120218-05
Date:
July 28, 2005

LEGEND:

A =

Dates:
1 =
2 =
3 =

Groups:
1 = Taxpayers #: 12, 34, and 36 on "Attachment"
2 = Taxpayers #: 7, 8, 13, 16, and 31 on "Attachment"
3 = All other Taxpayers on "Attachment"

Dear :

This letter responds to your letter and submissions of December 7, 2004, supplementing a previous submission of March, 2003, in which you requested on behalf of A, above, and forty other related parties (the "Taxpayers" – *See* "Attachment"), certain private letter rulings relating to the late-filing of Forms 8716, *Election To Have A Tax Year Other Than a Required Tax Year.* Specifically, you requested that the Taxpayers' late-filed Forms 8716 be considered timely filed under the authority contained in section 301.9100-3 of the Procedure and Administration Regulations. We are pleased to address your concerns.

The information submitted indicates that each of the forty-one (41) Taxpayers on whose behalf rulings are requested is a partnership employing an overall accrual method of accounting. Taxpayers are members of a "tiered structure" as defined in section 1.444-2T(e)(2) of the temporary Income Tax Regulations.

Under section 706(b) of the Internal Revenue Code, a partnership's taxable year must be its required taxable year, unless, among other exceptions not relevant here, the partnership elects under section 444 of the Code to use a taxable year other than its required taxable year. Sections 444(b) (1) and (3) permit an eligible partnership to elect or change to a taxable year 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. In the instant circumstances, Taxpayers desired to elect a taxable year ending November 30 for their initial taxable year, which is a permitted taxable year under section 444(b).

Section 444(d)(3)(B) of the Code and section 1.444-2T(e)(1) of the regulations provide, in relevant part, that entities that are part of a tiered structure that consists only of partnerships all of which have the same taxable year may make or continue an election under section 444(a) of the Code.

Section 1.444-3T(b)(1) of the 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 section 444 election.

Section 301.9100-1 of the regulations 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 section 444. If the provisions of section' 301.9100-2 do not apply to the taxpayer's situation, as in the instant case, the provisions of section 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 section 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.

In the instant circumstances, Group 1 Taxpayers' Forms 8716 electing to use a taxable year ending November 30 were due on or before Date 1; Group 2 Taxpayers' Forms 8716 electing to use a taxable year ending November 30 were due on or before Date 2; and Group 3 Taxpayers' Forms 8716 electing to use a taxable year ending November 30 were due on or before Date 3. Due to an error or misunderstanding, none of the forms was timely filed; however, the error was not due to any lack of due diligence or prompt action on the part of any Taxpayer.

The information submitted and representations furnished by the Taxpayers and their tax professionals establish that Taxpayers 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 section 301.9100-3(c)(1). Accordingly, the requirements of section 301.9100-3 for the granting of relief have been satisfied.

Within 60 days of the date of this ruling, each Taxpayer should file with the IRS Cincinnati Service Center (Attn: Entity Control) a Form 8716 electing to use a tax year ending November 30, effective for its first taxable year ending either Date 1, Date 2, or Date 3, as appropriate. A copy of this letter ruling should accompany such submission, and each Taxpayer should type or print at the top of the form: "Filed Under Section 301.9100-3 of the Regulations."

This ruling is further conditioned on Taxpayers complying with section 1.7519-1T(a)(2), which provides, in relevant part, that for each taxable year that a partnership has an election under section 444 in effect, the partnership must (i) file a return as provided in section 1.7519-2T(a)(2), and (ii) make any required payment as provided in section 1.7519-2T.

Except for the specific ruling above, which is restricted to the filing of Forms 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. This letter ruling is based on facts and representations provided by the Taxpayers and their authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions

existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with the Taxpayers' permanent records.

Pursuant to a power of attorney currently on file with this office, the ORIGINAL of this letter ruling is being sent to the Taxpayers' authorized representative, and copies are being furnished to the Taxpayers and their second-designated authorized representatives. A copy of this letter is also being sent to the Taxpayers' appropriate IRS industry director.

This ruling is directed only to the Taxpayers who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Associate Chief Counsel
(Income Tax & Accounting)

/s/ William A. Jackson

By _____
William A. Jackson
Chief, Branch 5

ATTACHMENT

Enclosures:
Copy of this letter
Copy for section 6110 purposes

ATTACHMENT

1.

PLR-119941-05

PLR- 119953-05

PLR-119947-05

4

PLR-119950-05

5.

PLR-119955-05

PLR- 119958-05

PLR-120150-05

8.

PLR-120154-05

9.

PLR-120199-05

PLR- 120202-05

PLR-120212-05

12.

PLR-120219-05

13.

PLR-120220-05

14.

PLR-120218-05

15.

PLR-120222-05

16.

PLR-120231-05

17.

PLR-120233-05

18.

PLR-120235-05

19.

PLR-120236-05

20.

PLR-120237-05

21.

PLR-120239-05

22.

PLR-120248-05

23.

PLR-120249-05

24.

PLR-120252-05

25.

PLR-120254-05

26.

PLR-120258-05

27.

PLR-120263-05

28.

PLR-120268-05

29.

PLR-120270-05

30.

PLR-120507-05

31.

PLR-120514-05

32.

PLR-120512-05

33.

PLR-120517-05

34.

PLR-120519-05

35.

PLR-120526-05

36.

PLR-120527-05

37.

PLR-120566-05

38.

PLR-120528-05

39.

PLR-120548-05

40.

PLR-120550-05

41.

PLR-120552-05

*****