

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B08  
PLR-123137-23

Date:  
April 19, 2024

Taxpayer =  
Advisor =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Year 1 =

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 2, effective for Year 1.

**FACTS**

Taxpayer’s Form 8716 electing a taxable year ending Date 2 for Year 1 was due on or before Date 3, but was not filed by that date. Taxpayer represents that it filed an S corporation election but did so late under Rev. Proc. 2013-30. Taxpayer had engaged Advisor, a qualified tax professional, in order to assure a proper filing. Advisor filed the required forms under that procedure, but due to an administrative error did not label Form 8716 as required by instructions. The error was not due to any lack of due diligence or prompt action on the part of Taxpayer.

On Date 4, the Taxpayer received Letter 385C from the Internal Revenue Service (IRS), notifying the Taxpayer that the IRS had approved the S election, but had not approved the requested year end. The letter provided that Taxpayer could refile Form 2553, *Election by a Small Business Corporation* and Form 1128, *Election to Adopt, Change,*

*or Retain a Tax Year* by the due date of the short period return, which had already passed. Taxpayer then filed this ruling request.

## LAW AND ANALYSIS

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 Section 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.

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. 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 301.9100-3(c)(3) provides that the interests of the Government are deemed prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128.

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 2 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.

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. This letter ruling is based on facts and representations provided by Taxpayer and its authorized representative, 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 not specifically addressed herein.

This ruling is conditioned on Taxpayer complying with Section 1.7519-1T(a)(2), which provides, in relevant part, that for each taxable year that an S corporation has an election under Section 444 in effect, the S corporation must file a return as provided in Section 1.7519-2T(a)(2) and make any required payments as provided in Section 1.7519-2T.

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 sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Erika C. Reigle  
Senior Technician Reviewer, Branch 8  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: