

## INTERNAL REVENUE SERVICE

Number: **200222014**  
Release Date: 5/31/2002  
UIL Index Nos.: 9100.09-00  
0444.03-00

CC:ITA:4 /PLR-100753-02

February 26, 2002

Dear

This letter is in response to a request filed on behalf of the above-named taxpayer regarding the late filing of a Form 8716, Election To Have a Tax Year Other Than a Required Tax Year. The taxpayer has requested an extension of time for making such an election under authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayer, a limited liability corporation organized on October 1, 1999, is a partnership that files its annual return of tax on Form 1065. The taxpayer's authorized representative prepared the taxpayer's initial tax return for the period October 1, 1999 through September 30, 2000. In the process of preparing the initial return, the representative failed to prepare and file the required election, under § 444 of the Internal Revenue Code, to have a tax year other than a required tax year (Form 8716). The tax return was timely filed by April 16, 2001, the extended due date of the return. Due to an error or misunderstanding on the part of the tax professional, the Form 8716 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 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 § 444 election.

Section 301.9100-1 of the Procedure and Administration Regulations sets forth rules respecting the granting of extensions of time for making certain elections. Under these rules, the Commissioner 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 301.9100-3 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 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 the taxpayer and its tax professionals establish that the taxpayer acted reasonably and in good faith in this matter. Furthermore, we have determined that the granting of relief in this case will not prejudice the interests of the government. Accordingly, the requirements of § 301.9100-3 for the granting of relief have been satisfied.

Therefore, the taxpayer is hereby granted an extension of time to file Form 8716 for the taxable year ending September 30, 2000. Within 45 days of the date of this letter, the taxpayer must file the required Form 8716, together with a copy of this letter ruling, with the service center where its federal income tax return is filed.

This ruling is also conditioned on the taxpayer complying with § 1.7519-1T(a)(2) of the temporary regulations, which provides, in relevant part, that for each taxable 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.

This ruling is limited to the filing of Form 8716. Except to the extent specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any sections 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 will be sent to your 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 by other taxpayers.

Sincerely,  
Michael J. Montemurro  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure