

Internal Revenue Service

Number: **200450014**

Release Date: 12/10/04

Index Number: 9100.09-00, 444.03-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:05

PLR-116415-04

Date:

EIN:

Dear _____ :

This letter responds to your letter dated December 19, 2003, submitted on the above-named taxpayer, requesting that the taxpayer's Form 8716 be considered timely filed under the authority of § 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that the taxpayer, a personal service corporation, incorporated on _____, but did not conduct any business until _____. The taxpayer's Form 8716 was due _____, but was not filed by that date. However, the information furnished shows that the taxpayer intended to file Form 8716 on a timely basis. Due to an error or misunderstanding 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 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.

PLR-116145-04

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 it 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.

An electing personal service corporation must comply with the minimum distribution requirements of section 280H for each year a section 444 election is in effect. If the personal service corporation does not meet these requirements, the applicable amounts it may deduct for payments made to employee-owners may be limited.

Within 45 days of the date of this ruling, the taxpayer should file with its appropriate IRS Service Center a Form 8716 electing to use a tax year ending _____, effective for its first tax year beginning _____, and ending _____. A copy of this letter ruling should accompany such submission, and the taxpayer should type or print at the top of the form: "Filed Under § 301.9100-3 of the Regulations."

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.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

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

Enclosure: copy for § 6110 purposes