

Internal Revenue Service

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Department of the Treasury

Washington, D.C. 20224

[REDACTED]

Person to Contact:

[REDACTED]

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply To:

CC:ITA:4 GENIN-145132-03

Date:

October 7, 2003

Dear [REDACTED]:

This letter is in response to your [REDACTED], letter and phone call with a member of our staff requesting general information about whether [REDACTED] can make a late election under § 444 of the Internal Revenue Code to change to a tax year other than a required tax year. The partnership wishes to use a tax year of September 30, effective September 30, 2003. We hope that the following general information is helpful to you.

A partnership, S corporation, or personal service corporation can elect under § 444 to use a tax year other than its required tax year. Certain restrictions apply to the election. In addition, a partnership or S corporation may have to make a payment for the deferral period. We note that under § 706, a partnership's required taxable year is the calendar year unless the partnership has certain partners with fiscal years.

In general, a partnership, S corporation, or personal service corporation can make a § 444 election if it meets all the following requirements.

- It is not a member of a tiered structure (defined in § 1.444-2T of the temporary Income Tax Regulations).
- It must not have had a § 444 election previously in effect.
- It elects a year that meets the deferral period requirement. If a taxpayer is changing its taxable year, the deferral period of the taxable year to be elected cannot be longer than the shorter of (i) three months or (ii) the deferral period of the taxable year that is being changed. See § 444(b)(2).

Under § 1.444-1T(b)(2)(iii) the phrase "deferral period of the taxable year that is being changed" means the deferral period of the taxable period immediately preceding the taxable year for which the taxpayer desires to make a § 444 election. The deferral period of such year is

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determined by using the required taxable year of the taxable year for which the taxpayer desires to make a § 444 election.

Under § 1.444-1T(b)(4)(ii)(A) the term “deferral period” means the months that occur after the end of the taxable year desired under § 444 and before the close of the required taxable year. A special rule in § 1.444-1T(b)(4)(ii)(B) provides, however, that if a partnership, S corporation, or personal service corporation is using the required taxable year as its taxable year, the deferral period is deemed to be zero.

Example (1) in § 1.444-1T(b)(4)(C) illustrates the rules of the preceding paragraph. The example assumes that partnership CD uses the calendar year, which is also its required taxable year. Under the special rule in § 1.444-3T(b)(4)(ii)(B), CD’s deferral period is zero. The example then refers to § 1.444-1T(b)(2)(i) for rules precluding CD from making a § 444 election to change its taxable year.

Section 1.444-3T(b)(1) provides, among other requirements, that Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, 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 section 444 election.

If you believe that the taxpayer is eligible to make a § 444 election, and the taxpayer desires to obtain an extension of the time to make that election, you should refer to §§ 301.9100-2 and 301.9100-3 of the Procedure and Administration Regulations. These regulations provides the rules for obtaining an extension of time to make a regulatory election, including an election under § 444.

You should note that the granting of an extension of time under § 301.9100-2 or § 301.9100-3 is not a determination that a taxpayer is otherwise eligible to make the election. See § 301.9100-1(a).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

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