

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:MIC:DET:TL-N-3211-99  
RDHeitmeyer

date: **AUG 09 1999**  
to: Chief, Quality Measurement Branch, Michigan District  
from: District Counsel, Michigan District, Detroit

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subject: [REDACTED]

EIN: [REDACTED]

In response to your request for an advisory opinion concerning whether the [REDACTED] (the taxpayer) is entitled to retain a fiscal year-end date of [REDACTED] we have reviewed the information you provided to our office as referenced by the attached exhibits A through J, as well as the attached taxpayer's written response to the Examination Division's proposed accounting change from a [REDACTED] fiscal year-end to a [REDACTED] fiscal year-end for the [REDACTED] and [REDACTED] taxable years.

**ISSUE**

May the Internal Revenue Service (the Service) convert the taxpayer from a [REDACTED] fiscal year-end to a [REDACTED] fiscal year-end where the taxpayer has filed a Form 1120S, U.S. Income Tax Return for an S Corporation with a fiscal year end date of [REDACTED] for all periods after [REDACTED] where the taxpayer properly submitted a Form 2553, Election by a Small Business Corporation to the Internal Revenue Service on [REDACTED] where the Internal Revenue Service Center at Cincinnati, Ohio issued a letter accepting the taxpayer's election to be treated as an S corporation with a fiscal year end of [REDACTED] and where to change the accounting period at this time will likely result in a notice of deficiency being issued to the taxpayer claiming a deficiency of \$ [REDACTED] for the [REDACTED] taxable year based solely on the proposed change in the taxpayer's accounting period.

**CONCLUSION**

The taxpayer is entitled to retain an accounting period with a fiscal year end of [REDACTED] for the years at issue. The advice contained in this memorandum is subject to 10-day post-review in the National Office, which we will expedite.

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**FACTS**

On or about [REDACTED] the taxpayer submitted a Form 2553, Election by a Small Business Corporation to the Internal Revenue Service at Cincinnati, Ohio (the Service Center). By letter dated [REDACTED] the Service Center notified the taxpayer that Form 2553 was incomplete and could not be processed until additional information was provided. The taxpayer proceeded to provide the additional information requested by the Service Center. In a letter dated [REDACTED] the taxpayer was informed by the Chief, Corporation Tax Branch that its request for an accounting period with a [REDACTED] year-end was denied due to the fact that it had not established a "business purpose" as defined by the applicable regulations.

On or about [REDACTED] the taxpayer submitted another Form 2553, Election by a Small Business Corporation to the Service Center with information to establish a "business purpose" as defined by the applicable regulations. On [REDACTED] [REDACTED], the Service Center issued a letter to the taxpayer accepting the taxpayer's election to be treated as an S corporation with a [REDACTED] fiscal year-end.

On [REDACTED] the Service Center issued a second letter, identical to its letter dated [REDACTED] which granting the taxpayer's election except that it provided for a fiscal year-end of [REDACTED]. On [REDACTED] the taxpayer wrote a letter to the Service Center to clarify the discrepancy. Included in the taxpayer's letter was the proviso that if the Service has not granted a [REDACTED] fiscal year-end, the taxpayer will operate as C corporation. The Service Center responded by letter dated [REDACTED] which indicated that the taxpayer's fiscal year-end was indeed [REDACTED]. The taxpayer was not informed of an issue with regard to its accounting period until it was discovered by a routine field audit conducted by the Michigan District Examination Division.

The taxpayer has been operating with a fiscal year-end of [REDACTED] for more than 10 years and continues to the present day to operate with a fiscal year end of [REDACTED]. The taxpayer believes it reasonably relied on the Service Center and disagrees with the Service's proposed adjustment which is in excess of [REDACTED] dollars and which is based solely on the change in accounting period issue.

**ANALYSIS**

Internal Revenue Code section 444(a) allows S corporations to elect a taxable year other than the required taxable year. Revenue Procedure 87-32 provides current guidelines for when S corporations may elect a taxable year other than the required taxable year as well as the current format for taxpayers to follow when electing an alternative taxable year.

At the time the taxpayer submitted its election, Revenue Ruling 83-25 was applicable. Revenue Rule 83-25 provides that, "those corporations who make or will make an election to be an S corporation and who desire to adopt, retain, or change a tax year ... should attach a statement ... to their S corporation election setting forth the business purpose for the desired tax year. These requests will be forwarded by the Service Centers to the National Office for consideration." The facts appear to indicate that the taxpayer complied with this provision. Upon reasonable assurance that it was granted a [REDACTED] fiscal year-end, the taxpayer proceeded to conduct its affairs using a [REDACTED] fiscal year-end.

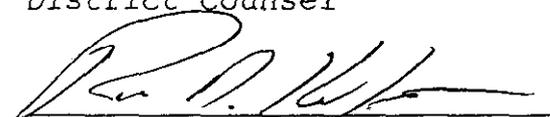
It appears that the taxpayer complied with the provisions then applicable to obtaining a [REDACTED] fiscal year-end and also took reasonable steps to ensure that its conduct was sanctioned by the Service. At the very least, it appears that the taxpayer acted in a manner consistent with the spirit of the applicable provisions and therefore should not be taken to task more than 10 years later for its good-faith reliance the Service's representations.

Based on the facts and circumstances of this case, the taxpayer should be permitted to retain a [REDACTED] fiscal year-end for the subject years and be required to justify a [REDACTED] fiscal year-end for all future years under current guidelines.

Questions or comments may be directed to the undersigned at (313) 226-2052.

PHOEBE L. NEARING  
District Counsel

By:



ROBERT D. HEITMEYER  
Attorney

Attachments  
As stated