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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:1
PLR-159807-05
Date: May 8, 2006

Legend

LLC =

D1 =

D2 =

State =

Dear :

This responds to a letter dated October 31, 2005, together with subsequent correspondence, submitted on behalf of LLC, requesting that LLC be given an extension of time under section 301.9100-3 of the Procedure and Administration Regulation to file an election to be classified as an association taxable as a corporation for federal tax purposes, relief to file a late S corporation election under section 1362(b)(5) of the Internal Revenue Code, and an accompanying fiscal year election under section 444.

FACTS

According to the information submitted, LLC was formed on D1 under the laws of State. LLC intended to be an S corporation, effective D1, with a fiscal year ending D2. However a Form 8832, Entity Classification Election, was not timely filed. Additionally, a Form 2553, Election by a Small Business Corporation with an accompanying section 444 election, was not timely filed.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes.

Section 301.7701-3(b)(1) provides that, except as provided in § 301.7701-3(b)(3) (relating to eligible entities existing prior to the effective date of this section), unless the entity elects otherwise, a domestic eligible entity is classified as a partnership if it has two or more members, and is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such an election as timely made for such taxable year and effective as of the first day of that tax year.

Section 444(a) provides that except as otherwise provided in § 444, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

Section 1.444-3T(b)(1) of the Temporary Income Tax Regulations provides a § 444 election shall be made by filing a properly prepared Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, with the Service Center indicated by the instructions to Form 8716. Except as provided in § 1.444-3T(b)(2) and (4), Form 8716 must be filed 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 be first effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the § 444 election.

LLC did not file a timely election to be treated as an S corporation under § 1362(a) effective D1. LLC has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. As a result, LLC is granted an extension of time of 60 days from the date of this letter to make an entity classification election by filing a Form 8832, effective D1, with the appropriate service center. A copy of this letter should be attached to the election. A copy of this letter is attached for this purpose.

Further, we conclude that LLC will be recognized as an S corporation effective D1, provided that LLC otherwise qualifies as a subchapter S corporation and within 60 days from the date of this letter, LLC submits a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

Furthermore, based on the information submitted and the representations made, § 301.9100-3 relief is granted to allow LLC an extension of time to file Form 8716, Election To Have a Tax Year Other Than a Required Tax Year, so as to effect a first taxable year ending on D2. Within 60 days of the date of this ruling letter, LLC must file the required Form 8716, together with a copy of this ruling letter, to the appropriate service center.

The ruling is conditioned on LLC complying with § 1.7519-1(a)(2) of the temporary Income Tax Regulations, which provides, in relevant part, that for each taxable year an S corporation has an election under § 444 in effect, the S corporation 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (5)

Three copies of this letter
Copy for § 6110 purposes
Original Form 8832
Original Form 2553
Original Form 8716