

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:

CC:PSI:3 – PLR-165567-04

Date: April 25, 2005

LEGEND

LLC =

Owner =

State =

a =

Dear :

This letter responds to a letter dated November 15, 2004, and subsequent correspondence, submitted on behalf of LLC requesting rulings under § 301.9100-3 of the Procedure and Administration Regulations (regarding a late entity classification election) and § 1362(b)(5) of the Internal Revenue Code (regarding a late S corporation election).

FACTS

The information submitted discloses that LLC was organized under the laws of State on a. Owner intended that LLC elect to be classified as a corporation for federal tax purposes effective a. However, LLC failed to file Form 8832, Entity Classification Election, to elect to be treated as an association taxable as a corporation for federal tax purposes.

Owner also intended that LLC elect to be treated as an S corporation effective a. However, LLC did not timely file a valid Form 2553, Election by a Small Business Corporation.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701- 2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) may elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association (and thus a corporation under § 301.7701- 2(b)(2)) or a disregarded entity separate from its owner.

Section 301.7701-3(c)(1)(i) provides in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701- 3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after 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 subtitles E, G, H, and I.

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 301.9100-1(a).

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 301.9100-3(a).

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not

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be treated as an S corporation until the taxable year following the year in which the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the taxable year and § 1362(b)(3) shall not apply.

CONCLUSIONS

Based on the facts and representations submitted, LLC has established that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, LLC is granted an extension of time of 60 days from the date of this letter for electing under § 301.7701-3 to be treated as an association effective a. LLC must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached.

In addition, we conclude that LLC has established reasonable cause for failing to make a timely S corporation election, and that LLC is eligible for relief under § 1362(b)(5). Accordingly, if LLC makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective a, within 60 days following the date of this letter, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion concerning whether LLC is otherwise eligible to be an S corporation for federal tax purposes. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3) of the Internal Revenue Code, this ruling may not be used or cited as precedent.

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Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to the taxpayer.

Sincerely,

/s/

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2 copies of this letter
Copy for § 6110 purposes

cc: