

Internal Revenue Service

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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:PSI:B03
PLR-153795-06

Date:
November 16, 2007

X =

A =

State =

d1 =

d2 =

d3 =

Year 1 =

Year 2 =

Dear :

We received a letter dated November 13, 2006, and subsequent correspondence written on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to be treated as an association taxable as a corporation for federal tax purposes, and requesting relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code. This letter responds to that request.

Facts

X was formed as a limited liability company under State law on d1. X's sole shareholder, A, intended that X be an S corporation for federal tax purposes effective d1. However, neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was filed timely for X. X subsequently filed Form 8832, Entity Classification Election, with the Service in d3, and the Service approved X's election to be taxed as an association taxable as a corporation effective d2.

Law and Analysis

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides an election under § 1362(a) may be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year. Section 1362(b)(3) provides that, if a small business corporation makes an election under § 1362(a) for any taxable year, and the election is made after the 15th day of the 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then the election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election, 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 such election, the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

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) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided

under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

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 can not be more than 12 months after the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 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 with a due date that is prescribed by a regulation (and not expressly provided by statute). Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3 (e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X has established that X acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Thus, X has satisfied the requirements of § 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, electing to be treated as an association taxable as a corporation for federal tax purposes effective d1. A copy of this letter should be attached to the election.

In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective d1. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective d1, along with a copy of this letter, within 60 days from the date of this letter, then such election shall be treated as timely made for X's taxable year beginning d1. A copy of this letter is enclosed for that purpose.

Further, this ruling is contingent upon X filing, within 60 days following the date of this letter, an original Form 1120S, U.S. Income Tax Return for an S Corporation, consistent with the treatment of X as an S corporation for tax year Year 2. In addition, A must pay any deficiencies assessed by the Internal Revenue Service for tax years Year 1 and Year 2, and must include the separately and nonseparately computed items in income as provided in § 1366, make adjustments to stock basis as provided in § 1367, and take into account any distributions as provided in § 1368.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal income tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

Sincerely,

/s/

WILLIAM P. O'SHEA
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes