

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:Br.1-PLR-120429-98

Date:

12/23/1998

### Legend:

X =

Y =

Sub1 =

Sub2 =

Date1 =

State =

This responds to a letter dated November 4, 1998, submitted on behalf of Y requesting an extension of time pursuant to §301.9100-3(a) of the Procedure and Administration Regulations to file an election to be treated as a corporation for federal tax purposes under § 301.7701-3(c).

## FACTS

X is a corporation formed under the law of State in 1980. X has several subsidiaries with which it files consolidated returns. On Date1, X formed Y, a limited partnership, and two corporations, Sub1 and Sub2, to act as the partners in the partnership; Sub1 is the 1% general partner of the partnership and Sub2 is the 99% limited partner of the partnership. Y was formed as a limited partnership for state law purposes. Y relied on a tax professional who failed to advise Y to make an election under § 301.7701-3(c) within 75 days of its first taxable year.

## LAW AND ANALYSIS

Section 301.7701-3(b)(1) of the Procedure and Administration Regulations provides guidance on the classification of domestic eligible entities for federal tax purposes. Generally, a domestic eligible entity with at least two members is treated as a partnership unless the entity elects to be treated otherwise.

Under § 301.7701-3(c)(1), a domestic eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(1) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(b) can be effective on the date specified on the Form 8832 or on the date filed. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Service Bulletin.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. § 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. § 301.9100-3(a).

## **CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Y is granted an extension of time for making the election to be treated as an association for federal tax purposes, effective January 1, 1998, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832 and a copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, the original of this letter is being sent to the taxpayer and a copy will be sent to the taxpayer's representative.

Sincerely,

**Signed/Paul F. Kugler**

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

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