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:B01
PLR-116920-09
Date: September 15, 2009

Legend:

X   =

State   =

D1   =

Dear   :

This letter responds to the letter dated September 9, 2008 and subsequent correspondence, submitted on behalf of X, requesting a ruling that X be granted an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) 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.

Facts

According to the information submitted, X was formed as a professional limited liability company under the laws of State on D1. The members of X intended that X be treated as an S corporation effective on D1, but the election to be treated as an S corporation was not timely filed. A form 8832, Entity Classification Election, for X to be an association taxable as a corporation was also not timely filed for X. Under the default rules of the entity classification regulations, X is classified as a partnership.

Law and Analysis

Section 301.7701-3(a) provides in part 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. An eligible entity with at least two members can elect to be classified as either an association 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)(i) provides that, except for certain existing entities described in § 301.7701-3(b)(3), unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members.

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. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards that 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 section 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) 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. Section 1362(b)(2) provides in relevant part that 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.

Under § 1362(b)(3), however, 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 be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if (1) no §1362(a) election is made for any taxable year and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an election to be treated as an association taxable as a corporation for federal tax purposes effective D1. X should make the election by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the form.

We further conclude that X has reasonable cause for failing to make a timely S election and, therefore, X is eligible for relief under § 1362(b)(5).   Accordingly, provided that (1) X makes the above entity classification election, (2) X otherwise qualifies as an S corporation, and (3) within 60 days from the date of this letter, X submits a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center, X will be treated as an S corporation effective D1.

Except as specifically provided herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to the power of attorney on file with this office, a copy of the letter is being sent to X's authorized representative.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
        Copy of this letter
        Copy for § 6110 purposes