

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:B02

PLR-145148-08

Date: April 9, 2009

Legend

X:

Y:

State:

Date 1:

Date 2:

Dear :

This responds to a letter received October 6, 2008, and subsequent correspondence submitted on behalf of X requesting that the Service grant X an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an entity classification election.

The facts submitted and representations made are summarized as follows. X (successor to Y) was formed as a corporation on Date 1 under the laws of State and was treated as an association taxable as a corporation for federal tax purposes. On Date 2, X converted from a corporation to a limited liability company under the relevant State statute. X inadvertently failed to file Form 8832, Entity Classification Election, electing to treat X as an association taxable as a corporation for federal tax purposes effective Date 2. X represents that if X is classified as an association taxable as a corporation, then this conversion would qualify as a reorganization under § 368(a)(1)(F).

Section 301.7701-2(a) generally provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-3(a) provides that an eligible entity with at least two members may elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or as 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(a) further provides that so long as a business entity is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity), it may elect its classification for federal tax purposes.

Section 301.7701-3(b)(1) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members or a disregarded entity if it has a single owner.

Section 301.7701-3(c) 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. The effective date of the election cannot be more than seventy-five (75) days prior to the date the form is filed and cannot be more than twelve (12) months after the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time 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 Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “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 Bulletin.

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 the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the information 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 file Form 8832 with the appropriate service center to elect to be treated as a corporation for federal tax purposes effective Date 2. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed 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) provides that it may not be used or cited as precedent.

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

Sincerely,

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes