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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-135348-06

Date:

October 04, 2006

Legend

X =

State =

D1 =

Dear :

This is in response to a letter dated July 17, 2006, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be treated as an association taxable as a corporation for federal income tax purposes, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was a limited liability company organized under the laws of State on D1. It was intended that X elect classification as an association taxable as a corporation and treatment as an S corporation effective D1. However,

neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was timely received by the appropriate service centers.

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. An eligible entity with a single owner can elect to be classified as an association (and thus taxable as a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that 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 an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the service center designated on the form.

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.

Under section 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 an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or an 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 an election. Section 301.9100-2 provides automatic extension 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 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. Generally, 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. 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 the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) 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 (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the facts submitted and the representations made, we conclude that 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. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective D1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for D1.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal 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.

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

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: