

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:PSI:3 – PLR-110942-04

Date:

August 02, 2004

Company:

Shareholders:

a:

b:

Dear :

This letter responds to a letter from your authorized representative dated December 5, 2003, as well as additional correspondence, requesting rulings for Company under §§ 301.7701-3(c) and 301-9100-3 of the Procedure and Administration Regulations (regarding a late entity classification election) and § 1362(b)(5) of the Internal Revenue Code (regarding a late S corporation election).

Company was established on a. Shareholders represent that they intended Company to be treated as an S corporation beginning b (the first day of its first tax year); however, Form 8832 (Entity Classification Election) and Form 2553 (Election by a Small Business Corporation) inadvertently were not filed timely with the Internal Revenue Service. Company filed Form 1120S (U.S. Income Tax Return for an S Corporation) for its first tax year and each subsequent year, and Shareholder's have filed their individual income tax returns for the same period consistent with Company's intended status as an S corporation.

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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) may elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members may elect to be classified either as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(1)(ii) provides in general that, unless it elects otherwise, a domestic eligible entity with two or more members is a partnership.

Section 301.7701-3(c)(1)(i) provides in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

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 § 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 Internal Revenue 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 a regulatory 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 § 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(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year—

(A) at any time during the preceding tax year, or

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(B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if--

(A) a small business corporation makes an election under § 1362(a) for any tax year, and

(B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year,

then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if--

(A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by this subsection for making the election for that tax year or no such election is made for any tax year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make the election,

the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

Based on the facts and representations submitted, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3, and that there was reasonable cause for Company's failure to make a timely S corporation election. Consequently--

- Company is granted an extension of 60 days from the date of this letter for electing under § 301.7701-3 to be treated as an association taxable as a corporation effective b. Company must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached.
- Company's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning b. This ruling is contingent on Company filing Form 2553, to be effective on b, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

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Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election, and we express or imply no opinion on whether Company otherwise is eligible to be an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs and Special Industries)

enclosures: copy of this letter
copy for § 6110 purposes

cc: