

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201732015**
Release Date: 8/11/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1362.00-00, 1362.01-00,
1362.01-03, 9100.00-00,
9100.31-00

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B01
PLR-134175-16

Date:
April 24, 2017

LEGEND:

X =

D1 =

State =

Dear _____:

This responds to a letter dated July 26, 2016, and subsequent correspondence, submitted on behalf of X requesting that the Service grant X an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to elect to be treated as an association taxable as a corporation for federal tax purposes, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

FACTS

The information submitted states that X was formed in State as a single-member limited liability company. X's default status was as a disregarded entity for federal tax purposes. X intended to elect to be treated as an association taxable as a corporation and to elect to be treated as an S corporation for federal tax purposes, with both elections effective D1.

X inadvertently failed to file both Form 8832, Entity Classification Election, and Form 2553, S Corporation Election. X is now seeking relief under § 301.9100 to file a late election, Form 8832, to be treated as an association taxable as a corporation for

federal tax purposes effective from D1. X is also seeking relief under § 1362(b)(5) to file a late S corporation election, Form 2553, effective D1.

X represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

LAW AND ANALYSIS

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that, unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) 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 appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to 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) provides that the term “regulatory election” includes 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 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 that 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.

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: (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) 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.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect 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 Form 8832.

In addition, based solely on the facts submitted and the representations made, 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 complete Form 2553 effective D1, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made for D1.

This ruling is contingent on X filing within 120 days of this letter all required returns and amended income tax returns consistent with the requested relief in this letter. A copy of this letter should be attached to any such returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. 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.

Sincerely,

John P. Moriarty
Acting Associate Chief Counsel
(Passthroughs & Special Industries)

Laura C. Fields

By: _____

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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