

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1-PLR-109770-00

Date:

June 14, 2000

### Legend:

A =

Date1 =

This responds to a letter dated April 28, 2000, submitted on behalf of A, requesting an extension of time pursuant to § 301.9100-3(a) of the Procedure and Administration Regulations to file an election to be treated as a corporation for federal tax purposes under § 301.7701-3(c).

## FACTS

According to the information submitted, A intended to be taxed as a corporation for federal tax purposes as of Date1, but failed to timely elect corporate status.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) ("an eligible entity") can elect its classification for federal tax purposes. 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 Code. Section 301.7701-2(a). An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. Generally, a domestic eligible entity with two or more members is a partnership unless the entity elects to be treated otherwise. § 301.7701-3(b)(1)(i).

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Section 301.7701-3(b)(1) provides guidance on the classification of domestic eligible entities for federal tax purposes. Generally, a domestic eligible entity with two or more members is a partnership unless the entity elects to be treated otherwise. § 301.7701-3(b)(1)(i).

Under § 301.7701-3(c)(1), a domestic eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(1) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(c) can be effective on the date specified on the Form 8832 or on the date filed if no date is specified on the form. The effective date specified on the 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 has discretion to grant a reasonable extension of time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a 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 Service Bulletin.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 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. § 301.9100-3(a).

## CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, A is granted an extension of time for making the election to be treated as a corporation for federal tax purposes, effective on Date1, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832. A copy of this letter should be attached to the election.

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

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this letter. Specifically, no opinion is rendered on the applicability of § 368 of the Code.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

**/s/Paul F. Kugler**

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

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