

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-126897-05

Date:

July 08, 2005

LEGEND:

X =

A =

State =

Date 1 =
Dear

This letter responds to a letter dated March 25, 2005, and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 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.

The information submitted states that X is a State limited liability company that was formed on Date 1. A, as the sole member of X, represents that he intended for X to be an S corporation for federal tax purposes effective Date 1. However, neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was timely filed for X.

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 § 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 can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation’s taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation’s taxable year, then the corporation will generally not be treated as an S corporation until the following year.

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, the Secretary may treat such an election as timely made for such taxable year.

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 sixty (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, effective Date 1. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1, 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 Date 1.

Except as specifically set forth above, no opinion is expressed or implied 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 who requested it. Section 6110(k)(3) of the Internal Revenue 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 yours,
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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