

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-114822-03

Date:

September 10, 2003

Legend

X:

A:

B:

C:

D:

E:

F:

State:

d1:

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Dear _____ :

This letter responds to a letter dated January 27, 2003, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting that the Service grant X an extension of time pursuant to § 301.9100 of the Procedure and Administration Regulations to file a Form 8832, Entity Classification Election, to be treated as an association taxable as a corporation for federal income tax purposes and relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X is a domestic limited liability company formed under the laws of State on d1. A, B, C, D, E, and F, the members of X, intended to elect to treat X as an association taxable as a corporation and to then elect to treat X as an S corporation, with both elections effective d1. However, X failed to timely file both the Form 8832 and the Form 2553, Election by a Small Business Corporation.

Section 301.7701-3(b)(1) provides guidance on the classification of a domestic eligible entity for federal tax purposes. Generally, a domestic eligible entity with two members is classified as a partnership unless the entity elects otherwise. To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file a Form 8832, with the service center designated on that form.

Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to seventy-five (75) days prior to the date the form is filed or up to twelve (12) months after the date on which the form 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) 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 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 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 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.

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Section 1362(a) provides that a small business corporation may elect to be an S corporation.

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 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 until 60 days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes effective d1, with the appropriate service center. X should make that election by filing Form 8832 with the relevant service center. A copy of this letter should be attached to the Form 8832. 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 d1. Accordingly, provided that X makes the above-mentioned election to be treated as an association and makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective d1, within 60 days following the date of this letter, then such election will be treated as timely made for d1. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes