

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

Refer Reply To:
CC:PSI:B05
PLR-138455-11
Date:
December 20, 2011

In Re:

LEGEND:

Taxpayer =

a =

b =

Dear :

This letter responds to Taxpayer's letter, dated September 12, 2011, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election to be treated as a homeowners association under § 528 of the Internal Revenue Code for its taxable years a and b.

The information submitted and the representations made are as follows: Taxpayer is a homeowners association. Taxpayer relied on an independent CPA firm to prepare its federal income tax returns for its taxable years a and b. The CPA firm filed Forms 1120 for the taxable years a and b. Upon becoming aware of the failure to file Forms 1120-H for the taxable years a and b, Taxpayer submitted this request for a letter ruling.

Section 528 generally provides that homeowners associations meeting the requirements of § 528(c) may be treated as tax-exempt organizations, but only to the extent of their exempt function income.

Section 528(c)(1) provides, in part, that the term “homeowners association” means an organization that elects (at such time and in such manner as the Secretary of Treasury by regulations prescribes) to have § 528 apply for the taxable year.

Section 1.528-8(a) of the Income Tax Regulations provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. This election must be made by filing a properly completed Form 1120-H (or such other form as the Secretary of Treasury may prescribe).

Section 1.528-8(b) provides that for taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in an exercise of discretion, may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not 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 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election under § 301.9100-1. In addition, § 301.9100-2 provides automatic extensions of time for making certain elections, and § 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 the 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(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the election should have been made is closed by the period of limitations on assessment under § 6501(a) before the taxpayer’s receipt of a ruling granting relief under § 301.9100-3.

Based on the facts and representations submitted with Taxpayer’s request, we cannot grant Taxpayer’s request with respect to Taxpayer’s taxable year a because the year is closed. Further, we have determined that the requirements of § 301.9100-3 have been satisfied with respect to Taxpayer’s taxable year b. Therefore, an extension of time is granted, until 120 days from the date of this letter, for making the election required on Form 1120-H for Taxpayer to be treated as a homeowners association under § 528 with respect to its taxable year b. A copy of this letter should be attached to Taxpayer’s Form 1120-H for its taxable year b.

We note, however, that the burden is upon Taxpayer to produce, upon request, any records necessary to establish to the satisfaction of the Internal Revenue Service that Taxpayer meets all of the requirements of § 528(c).

Except as expressly ruled 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 or under any other provisions of the Code. Specifically, we express no opinion concerning the assessment of interest, additions to tax, additional amounts, or penalties for failure to file an income tax return with respect to any year. In addition, we express or imply no opinion on whether Taxpayer qualifies as a homeowners association under § 528(c).

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

In accordance with a power of attorney on file with this office, a copy of this letter is being mailed to Taxpayer's authorized representative.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling; it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
NICOLE R. CIMINO
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: