

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
March 15, 2000

LEGEND

Company =

State =

d1 =

Dear

This responds to the letter dated February 12, 2000, submitted on behalf of Company by your authorized representative, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Company to elect to be treated as a corporation for federal tax purposes.

FACTS

According to the information submitted, Company, a domestic entity, was organized in State as a limited liability company (LLC) on d1. Company has two members. Company intended to elect to be treated as an association taxable as a corporation for federal tax purposes as of d1. However, Company failed to file the election timely.

LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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 as provided in this section. 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.

Section 301.7701-3(b)(1)(i) provides, in part, that unless a domestic eligible entity elects otherwise it is a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides, in part, 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government.

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 an election. 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.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Company is granted an extension of time of 60 days from the date of this letter to file Form 8832 with the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code.

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

This ruling is directed only at 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.

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

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