

PLR-165150-02

Company intended to elect its classification under § 301.7701-3(c) effective on Date 1. However, due to problems with X's accounting firm, Company inadvertently failed to file timely a Form 8832.

Company submitted a ruling request on November 7, 2002, asking that Company be granted relief under § 301.9100-3 to retroactively elect its entity classification pursuant to § 301.7701-3(c) effective to its formation on Date 1.

LAW AND ANALYSIS

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 a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner. An eligible entity with at least two members can elect to be classified as either an association or a partnership.

Section 301.7701-3(b) provides default classifications for eligible entities that do not make an election under this section. Under § 301.7701-3(b)(2)(i), a foreign eligible entity, unless the entity elects otherwise, is:

- (A) A partnership if it has two or more members and at least one member does not have limited liability;
- (B) An association if all members have limited liability; or
- (C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

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, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner has discretion to 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) of all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election having a due date prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

PLR-165150-02

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 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.

Section 301.9100-3(a) provides that requests for relief 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.

CONCLUSION

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. Accordingly, Company must file a Form 8832, Entity Classification Election, by Date 2, in order to elect its entity classification as of Date 1. A copy of this letter should be attached with the election. A copy is included for that purpose.

Except as specifically set forth above, we express or imply no opinion 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 requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer's authorized representative.

Sincerely,
/s/
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: