

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01 – PLR-121838-03

Date:
Oct 21 2003

Legend:

LLC =

Date 1 = State =

Dear :

This responds to your letter dated, March 17, 2003 requesting an extension of time under section 301.9100-1(c) of the Procedure and Administration Regulations to treat LLC as an association for federal tax purposes and relief under section 1362(b)(5) of the Internal Revenue Code.

Facts:

According to the information submitted, X was formed on Date 1 under State law. X intended to elect to be treated as an association taxable as a corporation and to then elect to be treated as an S corporation, with both elections effective Date 1. However, Form 8832, Entity Classification Election, and the election to be treated as an S corporation inadvertently were not timely filed.

Law and Analysis:

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible

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entity") can elect its classification for federal tax purposes. A "business entity" is an entity recognized for federal tax purposes that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Code. Section 301.7701-2(a). An eligible entity with at least two members can elect either to be classified as an association (and thus a corporation under section 301.7701-2(b)(2)) or as a partnership.

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

To elect to be classified other than as provided in section 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301.7701-3(c)(1)(i). An election will be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the election is filed nor later than twelve months after the filing date. Section 301.7701-3(c)(2)(iii).

Section 301.9100-1(c) allows the Commissioner to grant a reasonable extension of time for making a regulatory election under the rules set forth in sections 301.9100-2 and 301.9100-3. 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.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions for time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under section 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 301.9100-3(a).

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 taxable year.

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Section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

Conclusion:

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days following the date of this letter for making the election to be treated as an association taxable as a corporation for federal tax purposes, effective DATE 1. X should make the election by filing Form 8832 with the Philadelphia Service Center. A copy of this letter should be attached to that Form.

In addition, based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective DATE 1. An original Form 2553 along with a copy of this letter must be forwarded to the relevant Service Center within 60 days from the date of this letter.

Except as expressly provided 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.

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.

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (2)

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