

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:

CC:PSI:2 - PLR-151018-02

Date:

January 17, 2003

Legend

LLP =

A =

State =

d1 =

Year 1 =

Dear :

This is in reply to a letter dated August 26, 2002, and subsequent correspondence, submitted on behalf of LLP by LLP's authorized representative, requesting a ruling that LLP be given an extension of time to elect under § 301.9100-3 of the Procedure and Administration Regulations to be classified as an association taxable as a corporation for federal tax purposes, and an extension of time to elect to be an S corporation under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that LLP is a limited liability partnership formed on d1 of Year 1 under the laws of State. A, as the president of LLP, represents that he intended for LLP to be an S corporation for federal tax purposes as of d1 of Year 1. However, a Form 2553, Election by a Small Business Corporation, was not filed timely for LLP for Year 1. In addition, a Form 8832, Entity Classification Election, was not filed timely for LLP for Year 1.

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

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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.

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. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-2(a).

Section 301.7701-3(b)(1) provides that unless a domestic eligible entity elects otherwise, the entity is: (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, 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 the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

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. Section 301.9100-3(a).

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, LLP is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as an association taxable as a corporation for federal tax purposes effective d1 of Year 1. A copy of this letter should be attached to the Form 8832. A copy is included for that purpose.

In addition, based solely on the facts and the representations submitted, we conclude that LLP has established reasonable cause for failing to make a timely election to be an S corporation for LLP's Year 1 taxable year. Accordingly, provided that LLP makes an election to be an S corporation by filing a completed Form 2553 with

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the appropriate service center effective d1 of Year 1, within 60 days following the date of this letter, then such election will be treated as timely made for LLP's Year 1 taxable year. A copy of this letter should be attached to the Form 2553. A copy is included for that purpose.

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

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to LLP's authorized representatives.

Sincerely yours,

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

Enclosures: (3)  
Copies of this letter  
Copy for § 6110 purposes