

**Internal Revenue Service**

Department of the Treasury

Number: **200321004**  
Release Date: 5/23/2003  
Index Numbers: 1362.01-03, 7701.02-00  
9100.31-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-163744-02

Date:

February 10, 2003

LEGEND

X =

d1 =

Members =

State =

Dear :

This letter responds to a letter by your authorized representative, dated May 22, 2002, and subsequent correspondence on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election to be treated as a corporation for federal tax purposes, and relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was formed by Members on d1 as a State law limited liability company. The Members intended to elect, under § 301.7701-3, to classify X as an association taxable as a corporation for federal tax purposes, and

under § 1362, to treat X as an S corporation effective d1. However, due to inadvertence, X failed to timely file the elections.

### LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of a domestic eligible entity for federal tax purposes. Generally, a domestic eligible entity with two members is classified as a partnership unless the entity elects otherwise.

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

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified on Form 8832 or on the date filed if no such date is specified on the form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the form is filed and cannot be more than 12 months after the date on which the form is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to 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 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. Section 301.9100-1(b) defines regulatory election as an election whose due date is 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 the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If an S election is made after the first two and one-

half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year.

## CONCLUSIONS

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days following the date of this letter to make the election to be classified as an association taxable as a corporation for federal tax purposes, effective d1. The election should be made by following the procedure set forth in § 301.7701-3(c), including the filing of Form 8832 with the appropriate Service Center. A copy of this letter should be attached to the form. A copy of the letter is enclosed for that purpose.

In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for its first taxable year that began on d1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, with the appropriate service center effective d1, within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year that began on d1. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed on whether X is a valid S corporation.

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

Sincerely yours,  
/s/

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

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