

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-104914-04

Date:

March 30, 2004

Legend:

LLC =

X =

Date 1 =

State 1 =

Dear _____ :

This private letter ruling is in response to your request, dated December 3, 2003, on behalf of LLC, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be treated as a corporation for federal tax purposes under § 301.7701-3(c) as well as relief to file a late Form 2553, S Corporation Election, under § 1362(b)(5) of the Internal Revenue Code.

Facts

Based on the information submitted and representations made within, the relevant facts are as follows. On Date 1, LLC was organized under State 1 law as a limited liability company with X owning one hundred percent of the interests in LLC. LLC intended to make an election to be treated as an association taxable as a corporation and then to subsequently make an election to be treated as an S corporation.

X inadvertently failed to file both Form 8832, Entity Classification Election, and Form 2553, S Corporation Election. LLC is now seeking relief under § 301.9100 to file

a late election, Form 8832, to be treated as an association taxable as a corporation for federal tax purposes effective from Date 1. LLC is also seeking relief under § 1362(b)(5) to file a late S corporation election, Form 2553, effective Date 1.

LLC represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

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. A "business entity" is an 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 Code. Section 301.7701-2(a). An eligible entity with a single owner can elect either to be classified either as an association (and thus a corporation under § 301.7701-2(b)(2)) or as an entity separate from its owner.

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

To elect to be classified other than as provided in section 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 can 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).

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 301.9100-1(a). 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. Section 301.9100-3(a).

Section 1362(a) of the Code provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) of the Code provides guidance on when the 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 the corporation makes an election 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.

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

X did not file a timely election to be treated as a S corporation under § 1362(a). X has, however, established reasonable cause for not making a timely S election. Therefore, X is entitled to relief under § 1362(b)(5).

Conclusion

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, LLC is granted an extension of time of sixty (60) days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date 1. The election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

Based solely on the facts submitted and representations made, and provided that LLC otherwise qualifies as a subchapter S corporation, we conclude that LLC 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 sixty (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.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to the taxpayer representative.

Sincerely,

Heather C. Maloy

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

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes

cc: