

**Internal Revenue Service**

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:PSI:3 / PLR-116105-04

Date: June 30, 2004

LEGEND

X =

A =

D1 =

D2 =

State =

Dear \_\_\_\_\_ :

This letter responds to a letter dated March 8, 2004, and subsequent correspondence, written by your authorized representative on behalf of X, requesting rulings under § 301.9100-3 of the Procedure and Administration Regulations and under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was formed on D1 in State as a limited liability company. A, the sole owner of X, intended that X elect to be classified as a corporation for federal tax purposes, effective D1. However, due to inadvertence, the Form 8832, Entity Classification Election, was not filed timely.

A also intended that X elect to be taxed as an S corporation effective D2. However, due to the fact that X did not have a valid corporate entity election, X's Form 2553, Election by a Small Business Corporation, although filed, was not accepted.

## LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of a domestic eligible entity for federal tax purposes. Under § 301.7701-3(b)(1)(ii), unless it elects otherwise, a domestic eligible entity is disregarded as an entity separate from its owner if it has a single owner.

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 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, Entity Classification Election, 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 a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

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 301.9100-3(b)(1) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity of the election; or the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that such election is effective for the current taxable year if it is made during the preceding taxable year or before the 15th day of the third month of the current taxable year.

Section 1362(b)(3) provides that an election made after the 15th day of the third month of the current taxable year is treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the taxable year 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, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

## 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 from the date of this letter to file Form 8832 and elect to be classified as an association taxable as a corporation for federal tax purposes effective d1. A copy of this letter should be attached to the Form 8832. Additionally, we conclude that X has established reasonable cause for its failing to make a timely S corporation election, and that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective D2, within 60 days following the date of this letter, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

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

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

Sincerely,

/s/

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

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

cc: