

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200443020**

Release Date: 10/22/04

Index Number: 7701.00-00, 9100.31-00,
1362.01-03

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01 – PLR-126704-04

Date:
June 29 2004

Legend:

X =

State =

D1 =

Dear :

This letter responds to your letter dated November 21, 2003, and related correspondence, written on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8832, Entity Classification Election, electing under § 301.7701-3(c) to treat X as an association taxable as a corporation, and under § 1362(b)(5) of the Internal Revenue Code, to file a late Form 2553, electing to treat X as an S corporation.

FACTS

The information submitted discloses that X was formed as a limited liability company under the laws of the State on D1. X intended to be an S corporation from D1, but the elections (Form 8832 and Form 2553) were not filed.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity 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.

Section 301.7701-3(b)(1) provides that, except as provided in § 301.7701-3(b)(3) (relating to eligible entities existing prior to the effective date of this section), unless the entity elects otherwise, a domestic eligible entity is classified as a partnership if it has two or more members, and 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 under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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 E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 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 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. 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 the 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 no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such an election as timely made for such taxable year and effective as of the first day of that tax year.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an entity classification election by filing a Form 8832, effective D1, with the appropriate service center. A copy of this letter should be attached to the election. A copy of this letter is attached for this purpose.

Further, we conclude that X will be recognized as an S corporation effective D1, provided that X otherwise qualifies as a subchapter S corporation and within 60 days from the date of this letter, X submits a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code.

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)

Copy of this letter
Copy for § 6110 purposes