

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:1

PLR-132867-04

Date: October 14, 2004

October 14, 2004

Legend

LLC =

D1 =

State =

Dear :

This responds to a letter dated April 1, 2004, together with subsequent correspondence, submitted on behalf of LLC requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to treat LLC as an association for federal tax purposes and relief under § 1362(b)(5) of the Internal Revenue Code to file a subchapter S election.

FACTS

According to the information submitted, LLC was formed on D1 under State law. LLC intended to elect to be treated as an association taxable as a corporation and then to elect to be treated as an S corporation, with both elections effective D1. However,

Form 8832, Entity Classification Election, and Form 2553, Election by a Small Business Corporation, inadvertently were not timely filed.

## 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 will be a partnership if it has two or more members, unless it elects otherwise. A domestic eligible entity with one owner will generally be disregarded as an entity separate from its owner unless it elects otherwise.

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 with the service center designated on Form 8832.

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

Under § 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 subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose deadline 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.

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 interest 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. However, under § 1362(b)(3), if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if (1) 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 such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

## CONCLUSIONS

Based on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, LLC is granted an extension of time of sixty (60) days following the date of this letter to file Form 8832 to 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.

In addition, 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 D1, provided that LLC submits a properly completed Form 2553, with a copy of this letter attached, to the relevant service center within 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. Specifically, no opinion is expressed on whether LLC is otherwise eligible to be an S corporation.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

Enclosures (3)

Copy of this letter to be attached to Form 2553  
Copy of this letter to be attached to Form 8832  
Copy for § 6110 purposes

cc: