

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Date:

June 29, 2001

## LEGEND

Taxpayer =

Founders =

D1 =

D2 =

Dear

This letter responds to the ruling request dated February 28, 2001, submitted on behalf of Taxpayer, requesting an extension of time pursuant to section 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).

## FACTS

According to the information submitted, Taxpayer's Founders retained outside counsel to form a Limited Liability Corporation (LLC). Counsel established the LLC on D1, but did not render any tax advice with regard to the LLC. Founders retained an outside accounting firm to file Taxpayer's federal and state tax returns. Founders also retained other outside counsel to draft its operating agreement. From its inception, Taxpayer intended to be taxed as a corporation. However, neither Taxpayer's accountants nor either of its legal counsel advised Taxpayer that it needed to file Form 8832 in order for Taxpayer to be taxed as a corporation. Consequently, Taxpayer did not file Form 8832. On D2, Taxpayer's current counsel filed Form 8832 on behalf of Taxpayer.

## 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 any 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 Internal Revenue Code. Section 301.7701-2(a). An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. Generally, a domestic eligible entity with two or more members is a partnership unless the entity elects to be treated otherwise. Section 301.7701-3(b)(1)(i).

Pursuant to § 301.7701-3(c)(1), a domestic eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(1) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(c) may be effective on the date specified on the Form 8832 or on the date filed if no date is specified on the form. The effective date on the Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner may 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 Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory 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 to the satisfaction of the Commissioner 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).

## CONCLUSION

Based on the facts presented and representations made to the Service, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time for making an election to be treated as a corporation. Thus, the Form 8832 that was filed on D2, is effective on D1. The Form 8832 should be re-submitted to the appropriate Service Center. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,  
Paul F. Kugler  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures:  
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