

**Internal Revenue Service**

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Person to Contact:

Telephone Number:  
**(202) 622-3050**  
Refer Reply To:  
**CC:PSI:B1-PLR-145983-01**  
Date:  
October 11, 2001

LEGEND:

X =  
Y =  
LLC =  
  
Date 1 =  
State =

This responds to your letter dated August 10, 2001, submitted on behalf of LLC, requesting a ruling that LLC be given an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to elect to be treated as a corporation for federal tax purposes.

**FACTS**

According to the information submitted, X and Y were validly organized companies under applicable state law. Y was the wholly owned subsidiary of X. Both were taxed as C corporations. On Date 1, the following transactions were effectuated consecutively: LLC was formed under State law. X then merged into LLC, with LLC surviving the merger under state law. LLC represents that the merger qualified as a reorganization under section 368(a)(1)(A) of the Code. Immediately following that merger, Y was merged into LLC in a transaction that LLC represents as a tax free liquidation under section 332 of the Code. Although LLC intended that it be taxed as a corporation for federal tax purposes as of Date 1, LLC did not timely file an election (Form 8832) to be treated as an association and, therefore, taxable as a corporation for federal income tax purposes.

After LLC realized that it had not timely filed an election (Form 8832) to be treated as an association taxable as a corporation, it requested relief under section 301.9100-3.

**LAW AND ANALYSIS**

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Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 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 section 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 as an association (and thus a corporation under section 301.7701-2(b)(2)) or to be disregarded 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 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).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make an election.

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 for time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under section 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).

## CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of section 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 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.

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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 concerning whether any of the aforementioned transactions qualified as either a merger under section 368(a)(1)(A) of the Code or as a liquidation under section 332 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 the taxpayer.

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

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes