

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02 - PLR-110104-02
Date:
June 10, 2002

LLC =

D1 =

Year 1 =

D2 =

Year 2 =

A =

Dear :

This is in reply to your letter dated February 5, 2002, and subsequent correspondence submitted on behalf of LLC, requesting a ruling that LLC be given an extension of time to elect under § 301.7701-3(c) of the Procedure and Administration Regulations to be classified as an association taxable as a corporation for federal tax purposes and an extension to elect to be an S corporation under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that LLC is a domestic limited liability company formed on D1 of Year 1. A, who is LLC's president and only member, represents that he intended for LLC to be an S corporation for federal tax purposes as of D2 of Year 2. A represents that he relied upon his former accountant to file the necessary elections for LLC to elect to be treated as an S corporation. However, a Form 2553, Election by a Small Business Corporation, was not filed timely for LLC for Year 2. In addition, a Form 8832, Entity Classification Election, was not filed timely for LLC for Year 2.

Section 1362(b)(5) provides that if: (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the

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Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

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).

Section 301.7701-3(b)(1) provides that unless a domestic eligible entity elects otherwise, the entity is: (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

To elect to be classified other than as provided in § 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 will be effective on the date specified on the Form 8832 or on the date filed if no such date is 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 under the rules set forth in § 301.9100-3 to make a regulatory election. 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.

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 301.9100-3(a).

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, LLC is granted an extension of time of 60 days from the date of this letter to file Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as an association taxable as a corporation for federal tax purposes effective for the taxable year beginning on D2 of Year 2. A copy of this letter should be attached to the Form 8832.

Further, based solely on the facts and the representations submitted, we conclude that LLC has established reasonable cause for failing to make a timely election to be an S corporation for LLC's Year 2 taxable year. Accordingly, provided that LLC makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective for its Year 2 taxable year, within 60 days

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following the date of this letter, then such election will be treated as timely made for X's Year 2 taxable year. A copy of this letter should be attached to the Form 2553.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to LLC.

Sincerely yours,
WILLIAM P. O'SHEA
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110