

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B1-PLR-118074-02

Date:

January 28, 2003

Legend:

X =

State =

D1 =

D2 =

Dear :

This letter responds to the letter dated March 20, 2002 and related correspondence, written on behalf of X, requesting an extension of time under §301.9100-1 and §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, X is a limited liability company formed under the laws of the State on D1. X is an entity that is eligible to elect to be treated as an association taxable as a corporation for federal tax purposes by filing Form 8832, Entity Classification Election, with the appropriate service center. X desired to be

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treated as a corporation for federal tax purposes as of D1, the date of its formation. However, through inadvertence, the taxpayer's representative was not made aware of the correct date of X's formation. As a result, X filed an election that was untimely for a D1 effective date. The Internal Revenue Service accepted the late Form 8832 and indicated that X's election was effective D2.

X now requests an extension of time to file an amended Form 8832 in order to establish D1 as the effective date of its election to be treated as corporation for federal tax purposes. X represents that it acted reasonably and in good faith, that it is not using hindsight in requesting relief, and that granting the relief will not prejudice the interests of the Government.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

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.

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 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.

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 mean 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.

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).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of §§301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of sixty (60) days from the date of this letter to file an amended Form 8832, effective D1, with the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, we express 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) of the Internal Revenue 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 mailed to X.

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