

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B03 – PLR-154260-03

Date:

January 30, 2004

X =

State =

A =

B =

C =

d1 =

d2 =

d3 =

d4 =

Dear _____ :

This letter responds to your letter dated August 27, 2003, requesting a ruling under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to make an election to be treated as a corporation under § 301.7701-3.

FACTS

According to the information submitted, X was formed on d1 as a limited liability company under the laws of State. X's members, A, B, and C, intended X to be treated as an S corporation for federal income tax purposes effective d2. X filed a form 2553, Election by a Small Business Corporation, within 2 ½ months of d2, but inadvertently failed to timely file a Form 8832, Entity Classification Election, electing to be classified as an association taxable as a corporation.

X became aware of the failure to file a Form 8832 on d3. A request for relief under §§ 301.9100-1 and 301.9100-3 was filed on d4.

LAW AND ANALYSIS

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3 and 301.7701-4. 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 as provided in § 301.7701-3.

Section 301.7701-3(b)(1) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members or 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 in § 301.7701-3(b) by filing a Form 8832 with the service center designated on the 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 date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Under section 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 including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

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 of 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).

Section 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an election under § 301.7701-3 to be treated as an association taxable as corporation for federal tax purposes effective d2. X should make the election by filing a properly executed Form 8832 with the appropriate service center and attaching a copy of this letter to the election. A copy is enclosed for that purpose. Assuming X's election to be treated as a corporation is effective, and X is otherwise qualified to be classified as an S corporation, X's previously filed election to be treated as an S corporation will be effective d2.

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, we are sending a copy of this letter to X.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

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

cc: