

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-133487-04

Date:

December 15, 2004

LEGEND

X =

Y =

Z =

A =

State =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter, dated June 8, 2004, and subsequent correspondence from X's authorized representative, requesting an extension of time

under § 301.9100 of the Procedure and Administration Regulations for X to file an election under § 301.7701-3 to be treated as a corporation for federal tax purposes.

## FACTS

According to the information submitted, Z, X's predecessor, was incorporated in State on D1, and elected under § 1362(a) of the Internal Revenue Code to be treated as an S corporation effective D2.

On D3, Z converted into a limited partnership for State law purposes, and became X. X's partners are Y, a State limited liability company treated as a disregarded entity for federal tax purposes, and A, an individual who is also Y's sole owner. X intended to file an election under § 301.7701-3(c) to be treated as a corporation for federal tax purposes. However, due to inadvertence, the Form 8832, Entity Classification Election, was not filed timely.

## LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of a domestic eligible entity for federal tax purposes. Under § 301.7701-3(b)(1), unless it elects otherwise, a domestic eligible 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.

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 Form 8832 with the service center designated on the Form.

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified on Form 8832, or on the date filed if no such date is specified on the Form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the form is filed and cannot be more than 12 months after the date on which the form 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 §§ 301.9100-2 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 Code, except subtitles E, G, H, and I. 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.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity of the election; or the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

## CONCLUSIONS

Based on the facts submitted and representations made, we conclude that the requirements of § 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 file Form 8832 and elect to be classified as an association taxable as a corporation for federal tax purposes effective D3. A copy of this letter should be attached to the Form 8832.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether the conversion of Z to X qualifies as a reorganization under § 368(a)(1)(f), whether X, as a State limited partnership, has more than one class of stock under § 1361(d)(1)(D) and thus is ineligible to be an S corporation, or whether X is otherwise eligible to be an S corporation. See Rev. Proc. 99-51, 1999-2 C.B. 750; Rev. Proc. 2004-3, 2004-1 I.R.B. 114, 122, Sec. 5.04.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,  
*/s/*  
Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes

cc: