

**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:1  
PLR-104794-05

Date:  
July 01, 2005

Legend

X =

Y =

D1 =

D2 =

State =

Dear :

This responds to a letter dated January 20, 2005, submitted on behalf of X, requesting an extension of time, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file an entity classification election.

**FACTS**

According to the information submitted, X was formed as a corporation under the laws of State on D1. On D2, X converted to Y under the laws of State. X intended to continue to be classified as a corporation for federal tax purposes. X relied on X's tax advisor to provide X with tax advice. X's tax advisor inadvertently failed to advise X to timely file a Form 8832, Entity Classification Election.

## **LAW AND ANALYSIS**

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. 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)(i) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under section 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.

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 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 Federal Register.

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 301.9100-2 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.

## **CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3 and, therefore, is granted an extension of time of sixty (60) days from the date of this letter to file a Form 8832 to elect to be treated as an association taxable as a corporation, effective D2. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

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.

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 your authorized representatives.

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