Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 – PLR-156227-05

Date:
May 08, 2006

Legend:

X =

GP =

Company =

A =

B =

a% =

b% =

c% =

d% =

e% =

State =

d1 =

d2 =

d3 =

d4 =

d5 =

d6 =

d7 =

d8 =

Dear

This letter responds to a letter dated October 31, 2005 and subsequent correspondence, submitted on behalf X, by its authorized representative, requesting a ruling that X be given an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to elect under § 301.7701-3(c) to be treated as an association taxable as a corporation for federal tax purposes and be granted relief under § 1362(f) of the Internal Revenue Code.

According to the information submitted, X was incorporated under the laws of State on d1 and elected to be an S corporation effective d2. On d3, A and B, the shareholders of X, converted X to a State limited partnership. A held a a% limited partnership interest and a b% general partnership interest. B held a c% limited partnership interest and a d% general partnership interest. A Form 8832, Entity Classification Election, for X to elect to be treated as an association was prepared but never filed. A and B intended to assign their general partnership interests to Company, a State corporation owned by A and B. On d4, X amended its limited partnership agreement to reflect the change from A and B to Company as the general partner.

In d5, X's accountants advised X that Company was an ineligible S corporation shareholder and must be removed as an owner of X. On d6, Company converted from a State corporation to a State limited liability company with A as the sole owner, and X's limited partnership agreement was amended the following day to reflect the change. On d7, A and B met with new attorneys to discuss the conversion. A and B were informed that X's S election may have terminated on d3 when it converted to a limited partnership

because there may be a second class of stock. Additionally, if the S election did not terminate on d3, then it terminated on d4 when Company, an ineligible shareholder, became an owner. A and B were advised to restructure X and have X request inadvertent termination relief and late entity classification election relief.

On d8, A and B assigned all of their interests in X to GP, a State general partnership for a a% and c% general partnership interest in GP, respectively. Additionally, A assigned all of the interest in Company in exchange for an additional e% GP general partnership interest. GP filed an election to be treated as an association for federal tax purposes, an election to be treated as an S corporation, and an election to treat X as a qualified subchapter S subsidiary, all effective on d8.

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. An eligible entity with at least two members can elect to be classified as either an association or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(i) 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.

Section 301.7701-3(c)(1)(i) provides in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

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.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as 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.

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 a regulatory election.

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 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year. Section 1361(b)(1) defines the term "small corporation" as a domestic corporation which is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Consequently, 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.

We conclude that X's S corporation election terminated (1) on d3, if X's conversion from a State corporation to a State limited partnership created a second class of stock or (2) on d4, when Company, an ineligible shareholder, became a partner of X; and further, we conclude that any such termination was inadvertent within the meaning of § 1362(f). Therefore, we hold that under § 1362(f), X will be treated as an S corporation from d3, to d8, provided that X's S election was valid and was not otherwise terminated. A and B will be treated as the owners of X from d4 to d6 with respect to any interest Company may have owned in X.

Accordingly, all of the shareholders of X, in determining their respective income tax liabilities for the period beginning d3 and thereafter must include their pro rata share of the separately stated and non-separately computed items of X as provided in § 1366, make any adjustments to basis provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) 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 X's authorized representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for section 6110 purposes

cc: