

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:B02

PLR-109276-06

Date:

August 11, 2006

X =

Y =

State =

D1 =

D2 =

Dear

This letter responds to your letter dated January 20, 2006, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election to be classified as an association taxable as a corporation for federal tax purposes.

The information submitted states that on D1, Y organized X, a wholly owned State limited liability company. Since D1, Y has always treated X as a disregarded entity for federal tax purposes. However, X intended to be classified as an association taxable as a corporation for federal tax purposes but failed to timely file a Form 8832, Entity Classification Election. The period of limitations on assessments under § 6501(a) of the Internal Revenue Code has expired for the taxable year beginning D1. However, the period of limitations on assessments under § 6501(a) has not expired for the taxable year beginning D2, and for any subsequent years.

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)(ii), unless it elects otherwise, a domestic eligible 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 in § 301.7701-3(b) by filing Form 8832 with the service center designated on Form 8832.

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 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.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the

aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

X seeks to change its entity classification during a taxable year closed by the period of limitations on assessment. Therefore, granting relief will prejudice the interests of the government. The taxpayer's request for an extension of time to file Form 8832 and elect to be classified as an association taxable as a corporation for federal tax purposes for the taxable year beginning D1 is denied.

However, based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied for years in which the period of limitations on assessment has not expired. 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 D2. A copy of this letter should be attached to the Form 8832.

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 & Special Industries)

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