

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-108730-07
Date: May 14, 2007

Legend:

X =

State =

Date 1 =

Dear :

This letter responds to your letter, on behalf of X, dated February 9, 2007, requesting (1) an extension of time under section 301.9100 of the Procedure and Administrative Regulations to elect to treat X as an association taxable as a corporation, and (2) relief under section 1362(b)(5) of the Internal Revenue Code.

Facts

Based on the materials submitted and representations contained within, we understand the relevant facts to be as follows. X was formed as a limited liability company in accordance with the laws of State on Date 1. X intended to elect to be treated as an association taxable as corporation and then to elect to be treated as an S corporation, with both elections effective on Date 1. However, Form 8832, Entity Classification Election, and Form 2553, the election to be treated as an S corporation, were not timely filed.

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. A “business entity” is an entity recognized for federal tax purposes that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Code. Section 7701-2(a). An eligible entity with at least two members can elect to either be classified as an association (and thus a corporation under section 301.7701-2(b)(2)) or as a partnership.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members.

To elect to be classified other than as provided in section 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301-7701-3(c)(1)(i). An election will be effective on the date specified on the Form 8832, or on the date filed if no such date is specified. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the election is filed, nor later than twelve months after the filing date. Section 7701-3(c)(2)(iii).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election with a due date 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. 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 the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government. Section 301.9100-3(a).

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation’s taxable year, then

that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

Conclusion

Based on the facts submitted and representations contained within, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days following the date of this letter for making the election to be treated as an association taxable as a corporation for federal tax purposes, effective Date 1. A copy of this letter should be attached to the original election, Form 8832, Entity Classification Election.

Based on the facts submitted and representations contained within, we further conclude that, provided X otherwise qualifies as a subchapter S corporation, X will be recognized as an S corporation effective Date 1. An original Form 2553 along with a copy of this letter must be forwarded to the relevant Service Center within 60 days from the date of this letter.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express no opinion as to whether X otherwise qualifies as an S corporation. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. 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 the office, a copy of this letter will be sent to the taxpayer's representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes