

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202435015**
Release Date: 8/30/2024

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 7701.00-00, 9100.00-00,
1362.00-00, 1362.01-00,
1362.01-03

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-125167-23
Date:
May 29, 2024

LEGEND

X =

State =

Date
1 =

Dear _____ :

This letter responds to a letter dated December 16, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to be treated as an association taxable as a corporation for federal tax purposes, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

FACTS

The information submitted states that X was formed as a limited liability company under the laws of State on Date 1. X represents that it was eligible and intended to be treated as an S corporation effective Date 1. However, X inadvertently failed to properly and timely file a Form 2553, Election by a Small Business Corporation.

LAW AND ANALYSIS

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) such election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then such election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 301.7701-3(a) provides, in part, 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 (and thus a corporation under § 301.7701-2(b)(2)) 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) provides that unless the entity 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, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification by filing Form 8832 with the IRS Service Center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, 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 such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If

an election specifies an effective date more than 75 days prior to the date it was filed, it will be effective 75 days prior to the date it was filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9110-3 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 Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a “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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (i) the taxpayer acted reasonably and in good faith, and (ii) the grant of 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 §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832, Entity Classification Election, with the appropriate service center to elect 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 Form 8832.

Additionally, based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election and is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1 with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Joy Spies
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: