

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-113499-06
Date: August 17, 2006

Legend

Company = EIN:

Partnership = EIN:

A = SSN:

B = SSN:

State =

Date1 =

Date2 =

Date3 =

Date4 =

Dear _____ :

This letter responds to your letter dated January 31, 2006, and subsequent correspondence, requesting a ruling that Partnership be given 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 to be granted relief under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that Company was incorporated on Date1 under the laws of State and elected to be an S corporation effective Date2. Company's shareholders were A and B. On Date3, Company reorganized under the laws of State to Partnership, a State limited partnership. Partnership intended to be classified as an association taxable as a corporation. However, due to inadvertence, no Form 8832, Entity Classification Election, was filed for Partnership. Company represents that the conversion was intended to qualify as a reorganization under § 368(a)(1)(F).

On Date4, Partnership converted back to a State corporation. Company represents that it did not intend to terminate its S election. Company and its shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Service.

LAW AND ANALYSIS

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 either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(1) provides that an eligible entity with at least two owners will be classified as a partnership unless it elects otherwise.

Section 301.7701-3(c)(1)(i) provides that to elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301.7701-3(c)(1)(iii) provides that 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 the Form 8832 cannot be more than 75 days prior to the date the election is filed.

Under § 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 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 an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 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 business 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 § 1361(c)(2), or an organization described in § 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 on Rev. Proc. 99-51, 1999-2 C.B. 760, Rev. Proc. 2006-3, 2006-1 I.R.B.122, Sec. 5.06, provides that the Service will not rule on the following issue because it is being studied: whether a state law limited partnership electing under § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). Rev. Proc. 2006-3 also provides that the Service will treat any request for a ruling whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Partnership is granted an extension of time of 60 days from the date of this letter to make an election under § 301.7701-3 to be treated as an association taxable as a corporation effective Date3. Partnership must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached. A copy is enclosed for that purpose.

Further, we conclude that if Company's conversion from a State corporation to a State limited partnership created a second class of stock and thereby terminated Company's S corporation election, then the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Company will be treated as continuing to be an S corporation from Date3 to Date4, and thereafter, provided that Company's S election is not otherwise terminated under § 1362(d) and that Company and its shareholders treat Company as an S corporation during this period.

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. Specifically, we express or imply no opinion concerning whether Partnership otherwise was eligible to make the election or whether Company otherwise qualifies as an S corporation

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

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

Sincerely,

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

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