

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B03-PLR-158327-01
Date:
June 25, 2002

Legend

P =

C =

d1 =

d2 =

State1 =

State2 =

Dear :,

This letter responds to a letter dated October 22, 2001, submitted by your authorized representative on behalf of P, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election to be treated as an association taxable as a corporation for federal tax purposes under §301.7701-3(c), effective d1.

Facts

The information submitted provides that P is a limited liability partnership, formed on d1 in State1. Before forming P on d1, C, a corporation with headquarters in State2, conducted business in State1 through a local office and also conducted business in State2.

Following the formation of P, it was the intent of the parties that P elect under § 301.7701-3(c)(1)(i) to be treated as a association taxable as a corporation for federal tax purposes. Furthermore, it was intended that P and C be members of a consolidated group with C being the common parent of the group.

Taxpayer represents that P and C were aware that an election to be treated as a corporation needed to be made and believed that the election would be filed with the corporate return. However, due to inadvertence the election was not filed. The accountant that P and C engaged to prepare its corporate return discovered the failure to file the election and recommended requesting relief to file an election. P and C immediately filed this request for relief to file a late election.

Law

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. Under § 301.7701-2(c)(1), an entity with more than one owner can be classified as an association taxable as a corporation or as a partnership for federal tax purposes.

Section 301.7701-3(b)(1)(i) states that unless it elects otherwise, an eligible entity with more than one owner will be classified a partnership for federal tax purposes. 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) by filing Form 8832, Entity Classification Election, with the applicable service center.

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.

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.

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.

CONCLUSIONS

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. Accordingly, P is granted an extension of time of 60 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be treated as an association taxable as a corporation, effective d1. The election should be made by following the procedures set forth in Form 8832, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Sincerely yours,

/s/

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

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