

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-112524-02
Date:
August 19, 2002

Legend

Company =

Member =

State =

a =

b =

Dear :

This letter responds to a letter dated January 28, 2002, and subsequent correspondence, requesting on behalf of Company an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Company to elect to be treated as an association taxable as a corporation under § 301.7701-3(c).

FACTS

The information submitted discloses that Company was formed on a under the laws of State. Company has one member, Member. It is represented that Company's owner intended that Company be treated as a corporation effective b and that Company's accountant timely filed Form 8832, Entity Classification Election, on behalf of Company. However, the service center at which the Form 8832 was filed has no record of having received the form. Further, it is represented that Company's owner intended that Company be an S corporation since b. Company's accountant timely filed

Form 2553, Election by a Small Business Corporation, on behalf of Company. The service center at which Company filed the form received and approved Company's S election.

LAW & 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 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)(ii) provides that except as provided in § 301.7701-3(b)(3), unless the entity 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 in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides 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 date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot 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 including an election whose due date is prescribed by a regulation published in the Federal Register.

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 § 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. Section 301.9100-3(a).

CONCLUSION

Based on the facts submitted and representations made, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Consequently, Company 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 b. Company 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.

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 Company otherwise is eligible to make the election or otherwise qualifies as an S corporation.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Company.

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

Sincerely,

/s/

WILLIAM P. O'SHEA
Acting Associate Chief Counsel
(Passthroughs and Special
Industries)

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

cc: