

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-1128016-02

Date:

Sept 25 2002

Legend:

X =

Y =

State =

D1 =

D2 =

This responds to your letter dated April 30, 2002, submitted on behalf of X requesting relief under section 301.9100-3 of the Procedure and Administration Regulations.

FACTS

X incorporated under the laws of State and elected to be treated as a subchapter S corporation effective D1. X represents that all of its shareholders are eligible shareholders under section 1361. On D2, X converted into a State general partnership, changing its name to Y.

At the time X converted to a general partnership, the owners of X intended that it would file Form 8832, Entity Classification Election, electing to be treated as a corporation. The owners of X further intended that the conversion would be treated for federal income tax purposes as a reorganization under section 368(a)(1)(F) and that X's S corporation election and employer identification number would be unaffected by the conversion. However Form 8832 was 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. An eligible entity with two or more members can elect to be classified as either a partnership or an association.

Section 301.7701-3(b)(1) provides that an eligible entity with a two or more members will be treated as a partnership unless it elects otherwise.

Section 301.7701-3(c)(1)(i) allows an entity to elect to change its classification by filing Form 8832, Entity Classification Election, with the service center designated on that Form. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after the filing date.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary time extension. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

A corporation's S election will not terminate during a reorganization under section 368(a)(1)(F) if the surviving corporation meets the requirements of an S corporation under section 1361. See Rev. Rul. 64-250, 1964-2 C.B. 333.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Y has satisfied the requirements of sections 301.9100-1 and 301.9100-3. As a result, Y is granted an extension of time for making the election to be treated as a corporation for federal tax purposes, effective D2, until 60 days following the date of this letter. Y should make the election by filing Form 8832. A copy of this letter should be attached to that Form.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or

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referenced in this letter. Specifically, no opinion is expressed concerning whether the original election made by X to be treated as an S corporation was a valid election under section 1362, or whether the described transaction constitutes a reorganization under section 368(a)(1)(F).

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Heather C. Maloy

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

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