

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-157584-02

Date:

December, 20 2002

Legend:

X =

d1 =

State =

A =

B =

Dear :

This responds to a letter dated October 9, 2002, together with subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to be treated as an association taxable as a corporation for federal tax purposes and relief under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

According to the information submitted, X, an eligible entity, was formed under the laws of State. As of d1, X was equally owned by individuals A and B. X intended to elect to be treated as an association taxable as a corporation and then to elect to be treated as an S corporation, with both elections effective d1. However, X inadvertently failed to timely file either election.

## 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. 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 guidance on the classification of a domestic eligible entity. Generally, a domestic eligible entity will be a partnership if it has two or more members, unless it elects otherwise. A domestic eligible entity with one owner will generally be disregarded as an entity separate from its owner unless it elects otherwise.

Section 301.7701-3(c)(1)(i) provides 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 service center designated on Form 8832.

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 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.

Sections 301.9100-2 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.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. However, under § 1362(b)(3), if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if (1) no § 1362(a) election is made for any taxable year and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

### **CONCLUSION**

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time to elect to be taxed as an association effective d1. X has 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 for federal tax purposes effective d1. The form must be signed as specified in § 301.7701-3(c)(2)(i)-(iii). A copy of this letter should be attached to that form.

In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for its first taxable year that began on d1. Accordingly, provided that X makes an election to be an S corporation by filing a completed form 2553, Election by a Small Business Corporation, with the appropriate service center effective d1, within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year that began on d1. A copy of this letter should be attached to the Form 2553.

Except as specifically provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 (3)

Copy of this letter to be attached to Form 8832

Copy of this letter to be attached to Form 2553

Copy for § 6110 purposes