

**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-166239-03

Date:

July 1 2004

Legend:

LLC =

Owners =

State =

Date 1 =

Dear :

This letter responds to the letter dated November 9, 2003 and related correspondence, written on behalf of LLC, requesting a ruling under section 301.9100-3 of the Procedure and Administration Regulations and section 1362(b)(5) of the Internal Revenue Code.

Facts:

The information submitted discloses that LLC was organized under the laws of State on Date 1. Owners intended that LLC elect to be classified as a corporation for federal tax purposes, effective Date 1. However, LLC inadvertently failed to file Form 8832, Entity Classification Election, to elect to be treated as an association taxable as a corporation for federal tax purposes.

Owners also intended that X elect to be taxed as an S corporation effective Date 1. However, LLC did not file a valid Form 2553, Election by a Small Business Corporation.

#### Law and Analysis:

Section 301.7701-3(a) provides, in part, 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 as provided in this section. An eligible entity with a single owner can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a disregarded entity.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, with the service center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 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 section 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 301.9100-1 through 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 extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 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. Section 1362(b)(2) provides in relevant part that 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. Under § 1362(b)(3), however, 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 LLC has satisfied the requirements of section 301.9100-3. As a result, LLC is granted an extension of time of sixty (60) days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 1. In addition, we conclude that LLC has established reasonable cause for its failure to make a timely S corporation election, and that LLC is eligible for relief under section 1362(b)(5). Therefore, LLC will be treated as an S corporation from Date 1 and thereafter provided that LLC's S election is not otherwise terminated under section 1362(d). An original Form 2553 along with a copy of this letter must be forwarded to the relevant service center within sixty (60) days from the date of this letter.

Accordingly, provided that LLC otherwise qualifies as an S corporation and that LLC files Form 8832 and Form 2553 as provided above, we conclude that LLC will be treated as an S corporation effective Date 1.

A copy of this letter should be attached to each election. Copies are enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed on whether LLC is otherwise eligible to be treated as an S corporation.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to the taxpayer.

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (3)

Two (2) copies of this letter  
Copy for § 6110 purposes