

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

GENIN-104824-05

Date:

March 02, 2005

Dear [REDACTED]

This responds to your letter dated January 14, 2005, in which it was requested that we recognize your election to be an entity taxable as an association effective October 29, 2003.

Section 301.7701-1(a) of the Procedure and Administration Regulations provides general rules for the classification of various organizations for federal tax purposes. Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under § 301.7701-2, § 301.7701-3, and § 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner) that is not properly classified as a trust or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. Section 301.7701-2(b) sets forth those business entities that are considered corporations for federal tax purposes.

Section 301.7701-3 provides that a business entity not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) is able to choose its classification for federal tax purposes. Under § 301.7701-3(b)(1) a domestic eligible entity is, in the absence of an election otherwise, a partnership if it has two or more members and disregarded as an entity separate from its owners if it has a single owner.

Section 301.7701-3(c)(1)(i) provides generally that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, 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 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. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

Revenue Procedure 2002-59 provides guidance under § 7701 of the Internal Revenue Code for an entity newly formed under local law that requests relief for a late initial classification election. Rev. Proc. 2002-59 provides that an entity is eligible for additional time to elect its entity classification if it files, on or before the due date of the first federal tax return (excluding extensions) of the entity's desired classification, a completed Form 8832. Unfortunately, you are not eligible for relief under Rev. Proc. 2002-59 because you did not file a Form 8832 before the due date of your first federal tax return, which was March 15, 2004.

The Commissioner has authority under § 301.9100-1 and § 301.9100-3 to grant an extension of time if a taxpayer fails to file a timely election under § 301.7701-3(c). Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Accordingly, relief for your late entity election may be obtained by requesting a letter ruling from the National Office. The procedures for requesting a private letter ruling are set out in Revenue Procedure 2005-1 (copy enclosed). In addition, Rev. Proc. 2005-1 requires taxpayers to submit a user fee along with their ruling request. If your ruling request is postmarked before March 1, 2005, the standard user fee for a private letter ruling is \$6,000. If your ruling request is postmarked after March 1, 2005, the standard user fee for a private letter ruling is \$ 7,000.

However, taxpayers with gross income of less than \$1 million on their tax return for the most recent 12-month taxable year, qualify for a **reduced user fee** in the amount of \$500 if the request is postmarked before March 1, 2005, or in the amount of \$625 if the request is postmarked after March 1, 2005. If you qualify for the reduced fee, you must include a statement certifying your gross income for the last 12-month taxable year. Otherwise, the higher fee will apply.

If you decide to submit a formal request for a private letter ruling, please review Appendix B of Rev. Proc. 2005-1 and be certain to include all required procedural statements. Also include the proper user fee and any documents that substantiate your intent to be an entity taxable as an association from inception. Please refer your request to our office by adding the following to the address:

Attn: CC:PA:T

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:PSI:1
Room 5002

We hope that this information is helpful to you. If you have additional questions,
please contact _____ at _____ (not a toll-free call).

Sincerely,

/s/ Dianna K Miosi

Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Rev. Proc. 2005-1