

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200910005**

Release Date: 3/6/2009

Index Number: 7701.00-00, 9100.00-00,
9100.31-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B02
PLR-125223-08
Date:
December 01, 2008

Legend

X =

A =

B =

State =

Date =

Year1 =

Year2 =

Dear _____ :

This responds to a letter dated May 27, 2008, and 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 file an entity classification election to be classified as a partnership for federal tax purposes.

The information submitted states that X is a limited liability company formed under the laws of State on Date. X has two owners, A and B. X is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). X intended to be classified as a partnership, effective on Date. However, X did not timely file Form 8832, Entity Classification Election, electing to be treated as a partnership. Instead, X inadvertently elected to be treated as an association taxable as a corporation, effective

Date. In Year1 and Year2, X, A and B filed their returns consistent with X being a partnership.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1)(i) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members.

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 appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The 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.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes 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 the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 60 days from the date of this letter to file a Form 8832, Entity Classification Election, with the appropriate service center and elect to be treated as a partnership for federal tax purposes, effective beginning Date. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code and the regulations thereunder.

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. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes