

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:02
PLR-133963-08

Date:
November 24, 2008

X =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated July 15, 2008, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code and requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations, that X be granted an extension of time to elect under § 301.7701-3(a) to be classified as an association taxable as a corporation for federal tax purposes.

According to the information submitted, X was formed on Date 1 under State law. X intended to elect to be treated as an association taxable as a corporation and also to elect to be treated as an S corporation, with both elections effective Date 2. Due to inadvertence, however, no Form 2553, Election by a Small Business Corporation or Form 8832, Entity Classification Election, was filed with respect to X.

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

Section 1362(b)(5) provides that if: (A) an election under § 1362(a) is made for

any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

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.

Section 301.7701-3(b) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file 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 §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary extension of time. 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 Government.

Based solely on the information submitted and the representations made, we conclude that, provided that X otherwise qualifies as a subchapter S corporation, X will be treated as an S corporation effective Date 2. A Form 2553, Election by a Small Business Corporation, along with a copy of this letter, must be forwarded to the relevant service center within 60 days from the date of this letter.

In addition, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date 2. X should make the election by filing Form 8832, Entity

Classification Election, with the relevant service center. 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 referenced in this letter. Specifically, no opinion is expressed concerning whether X is, in fact, eligible to be 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 X's authorized representative.

Sincerely,

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

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes