

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202219003**
Release Date: 5/13/2022

Third Party Communication: None
Date of Communication: Not Applicable

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

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-111577-21

Date:
February 14, 2022

LEGEND

X =

State =

Date 1 =

Date 2 =

Year 1 =

Dear :

This letter responds to a letter dated April 25, 2021, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3 to be treated as a partnership for federal tax purposes.

FACTS

According to the information submitted and representations made within, X was formed as a limited liability company under the laws of State on Date 1. Following advice provided, X timely filed a valid election to be treated as an S corporation effective Date 1. Shortly thereafter, X was advised to elect to be treated as a partnership rather than an S corporation, and X took steps to change its initial entity classification. However, in Year 1, X discovered that due to inadvertence, X had failed to timely change its initial classification.

For all tax years since X's formation, X has filed a Form 1065, U.S. Return of Partnership Income, and its shareholders have treated X as a partnership, contrary to X's election to be treated as an S corporation, but consistent with the relief sought.

X now seeks relief to make a late entity classification election to be treated as a partnership effective Date 2. X represents that it acted in good faith and that no hindsight is involved in seeking this relief. X further represents that granting the requested relief will not prejudice the interests of the Government.

LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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 as provided in § 301.7701-3. 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 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.

Section 301.7701-3(c)(1) provides, in part, 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 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(i) provides, in part, 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 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iv) provides, in part, that if an eligible entity makes an election under section 301.7701-3(c)(1)(i) to change its classification, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of § 301.7701-3(c)(1)(iv).

Section 1361(a)(1) of the Internal Revenue Code provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible shareholder and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months excepts in the case of a taxpayer who is abroad), under all subtitles of the 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.

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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Because X's initial election was made as of its date of formation, the sixty-month limitation does not apply, and X may make a subsequent election on Date 2.

Accordingly, X is granted an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as a partnership for federal income tax purposes, effective Date 2. A copy of this letter should be attached to the Form 8832.

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 or implied concerning whether X is otherwise eligible to make the election.

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

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 representatives.

Sincerely,

/s/

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for Section 6110 purposes

cc: