

**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:B03  
PLR-103301-23

Date:  
April 06, 2023

RE:

Legend

X =

Date =

State =

Dear :

This letter is in response to your request dated February 1, 2023, submitted on behalf of X by its authorized representative, requesting (1) an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3 to be classified as an association taxable as a corporation for federal tax purposes and (2) relief under § 1362(b)(5) of the Internal Revenue Code (Code) to treat its S corporation election as timely made.

FACTS

The information submitted states that X was formed on Date under the laws of State. X represents that as of Date, it was a domestic entity eligible to elect to be classified as a corporation for federal tax purposes. X also represents that it intended to be treated as an S corporation effective Date. However, X did not timely file Form 8832, Entity Classification Election, or Form 2553, Election by a Small Business Corporation.

## LAW AND ANALYSIS

### Entity Classification Election

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.

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, in part, that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing Form 8832 with the service center designated on the Form 8832. 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.

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), a request for relief will be granted when the taxpayer provides 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) granting relief will not prejudice the interests of the Government.

### S Corporation Election

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) such election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then such election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

### CONCLUSION

Based solely on the facts submitted and representations made, 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 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to be classified as an association taxable as a corporation for federal tax purposes effective Date. A copy of this letter should be attached to the Form 8832.

In addition, we conclude that X has established reasonable cause for failing to make a timely S corporation election and is eligible for relief under § 1362(b)(5). Accordingly, X's S corporation election will be treated as timely made effective Date.

This ruling is contingent on X filing Form 2553 with an effective date of Date with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the Form 2553 filed with the service center.

Further, this ruling is contingent on X and its owners filing within 120 days from the date of this letter all required returns for all open years consistent with the requested relief. A copy of this letter should be attached to any such returns.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

The rulings contained in this letter is 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.

These rulings are directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*/s/ Margaret Burow*

By:

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Margaret Burow  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: