

Internal Revenue Service

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Person To Contact:
, ID No.

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Refer Reply To:
CC:PSI:3
PLR-120031-22

Date:
April 07, 2023

Legend

Company =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated September 7, 2022, and subsequent correspondence, submitted on behalf of Company requesting that the Service grant Company an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be classified as an association taxable as a corporation for federal tax purposes under § 301.7701-3, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, Company was formed as a limited liability company under the laws of State on Date 1. Company intended to elect to be classified as an association taxable as a corporation and to elect to be treated as an S corporation for federal tax purposes, with both elections effective Date 2. However, Company failed

to file Form 2553, Election by a Small Business Corporation, including the deemed election to be classified as an association taxable as a corporation under § 301.7701-3(c)(1)(v)(C) or any separate Form 8832, Entity Classification Election, effective Date 2.

LAW AND ANALYSIS

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 chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that 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)(i) provides 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)(iii) provides that an election 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 such date is specified on the election form. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and no more than 12 months after the date 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 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 the 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 a taxpayer provides evidence 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.

Section 1362(a) provides that a small business corporation may elect 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)(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, the Secretary may treat the 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 Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, Company 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 2. A copy of this letter should be attached to the Form 8832.

In addition, based solely on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation effective Date 2 and is eligible for relief under § 1362(b)(5). Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553 effective Date 2, with the appropriate service center within 120 days from the date of this letter, then such election shall be treated as timely made. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Company is otherwise eligible to be an S corporation for federal tax purposes. 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.

We express no opinion concerning the assessment of any interest, additions to tax, additional amounts, or penalties for failure to file a timely tax or information return with respect to any taxable year that may be affected by this ruling. For example, we express no opinion as to whether a taxpayer is entitled to relief from any penalty on the basis that the taxpayer had reasonable cause for failure to file timely any income tax or information returns.

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 requested rulings, it is subject to verification on examination.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc:

eFax