

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:B02 – PLR-155012-04

Date:
April 21, 2005

Legend

LLC = _____
EIN: _____

Date 1 = _____

Date 2 = _____

State = _____

Dear _____ :

This responds to a letter dated October 11, 2004, and subsequent correspondence, submitted by LLC, requesting an extension under § 301.9100-3 of the Procedure and Administration Regulations for LLC to elect to be treated as an association taxable as a corporation for federal tax purposes and a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that LLC is a limited liability company formed on Date 1 under the laws of State. LLC's corporate minutes indicate that LLC intended to elect to be treated as an S corporation for federal tax purposes, effective Date 2. However, there is no record of LLC timely filing a Form 8832, Entity Classification Election, or a Form 2553, Election by a Small Business Corporation.

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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. Under § 301.7701-2(c)(1), a domestic eligible entity with one owner can elect to be classified as an association taxable as a corporation. Section 301.7701-3(b)(1)(ii) states that unless it elects otherwise, a domestic eligible entity with one owner will be disregarded as an entity separate from its owner. 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 an election.

Section 301.9100-2 through § 301.9100-3 set forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting 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) provides the rule on when an S election will be effective.

Section 1362(b)(2) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

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.

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Conclusion

Based solely on the information submitted and the representations made, we conclude that the requirements of section §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, LLC is granted an extension of time of 60 days from the date of this letter to file Form 8832 with the appropriate service center electing under § 301-7701-3(c) to be classified as an association taxable as corporation for federal tax purposes effective Date 2. A copy of this letter should be attached to that form. A copy is included for that purpose.

We also conclude that LLC has established reasonable cause for failing to make a timely election to be an S corporation. Accordingly, provided that LLC makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 2 within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553. A copy is included for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code, including whether LLC qualifies as a small business corporation under § 1361(b) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to LLC.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (3):

Copy of this letter
Copy for section 6110 purposes