

Internal Revenue Service

Department of the Treasury

Index Number: 9100.00-00
7701.00-00
7701.02-00

Washington, DC 20224

Number: **199904022**
Release Date: 1/29/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1 PLR-114320-98
Date:
October 30, 1998

Legend

X =

Y =

State =

D1 =

This responds to your request that Y be given an extension of time to elect to be taxed as a corporation for federal tax purposes under § 301.7701-3(c) of the Procedure and Administration Regulations.

FACTS

Y, a subsidiary of X, was converted into a limited liability company under State law on D1. X is a shareholder of Y. X and Y intended that Y be treated as a corporation for federal tax purposes effective on D1. Under the current classification rules, Y is required to make an election to be treated as a corporation for federal tax purposes. However, such an election was not timely filed.

LAW AND ANALYSIS

Section 301.7701-3(b)(1) of the Procedure and Administration Regulations provides guidance on the classification of domestic eligible entities for federal tax purposes. Generally, a domestic eligible entity with at least two members is treated as a partnership unless the entity elects to be treated otherwise.

Under §301.7701-3(c)(1), a domestic eligible entity may elect to be classified other than as provided under §301.7701-3(b)(1) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under §301.7701-3(b) can be effective on the date specified on the Form 8832 or on the date filed. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time, under the rules set forth in §§301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

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 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Y is granted an extension of time to elect to be treated as a corporation for federal tax purposes until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

PAUL F. KUGLER
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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