

Internal Revenue Service

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Refer Reply To:

CC:PSI:B02 – PLR-137896-04

Date: January 14, 2005

LLC =

A =

d1 =

Dear :

This letter responds to a letter, dated July 9, 2004, and subsequent correspondence, submitted on behalf of LLC by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to be treated as an association taxable as a corporation for federal tax purposes and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that LLC is a limited liability company formed on d1. A, as a managing member of LLC, represents that he intended for LLC to be an S corporation for federal tax purposes effective d1. However, a Form 2553, Election by a Small Business Corporation, was not filed timely for LLC. In addition, a Form 8832, Entity Classification Election, was not filed timely for LLC.

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.

Section 301.7701-3(b)(1)(i) provides that, unless it elects otherwise, a domestic eligible entity with two or more members will be classified as a partnership.

Section 301.7701-3(c)(1)(i) provides that to elect to be classified other than as provided in 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification

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Election, with the designated service center. Section 301.7701-3(c)(1)(iii) provides that an election made 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 effective 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.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of Government.

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

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.

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, LLC is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as an association taxable as a

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corporation for federal tax purposes effective d1. A copy of this letter should be attached to the Form 8832. A copy is included for that purpose.

In addition, we conclude that LLC has established reasonable cause for failing to make a timely election to be an S corporation effective d1. Accordingly, provided that LLC makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective d1, within 60 days following the date of this letter, then such election will be treated as timely made for LLC effective d1. A copy of this letter should be attached to the Form 2553. A copy is included for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether LLC was or is a small business corporation under § 1361(b).

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 LLC's authorized representative.

Sincerely,

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

Enclosure (2)
Copy of this letter
Copy for § 6110 purposes