

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-119274-01

Date:

May 30, 2001

Legend:

Entity =

X =

Y =

Z =

State 1 =

State 2 =

D1 =

D2 =

D3 =

This responds to a letter dated March 30, 2001, together with subsequent correspondence, submitted on behalf of Entity, requesting a time extension under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under section 301.7701-3(c) to be treated as an association taxable as a corporation for federal tax purposes.

**FACTS**

According to the information submitted, X was formed under the laws of State 1. X elected to be classified as an S corporation effective on D1. On D2, Y was formed under the laws of State 2, and X merged into Y. Also on D2, Entity, a domestic entity, was formed as a State 2 business trust with two beneficial owners, and Y merged into Entity. Z was formed under the laws of State 1 as a wholly-owned subsidiary of Entity. Entity filed a Form 8869 (Qualified Subchapter S Subsidiary Election) for Z effective on D3. Entity intended to elect to be treated as an association taxable as a corporation for federal tax purposes as of D2. However, Entity failed to file the election timely.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 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 this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(1)(ii) provides, in part, that unless a domestic eligible entity elects otherwise it 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 under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under section 301.9100-1(c) the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government.

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 301.9100-2 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 section 301.9100-2. Requests for relief under section 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.

## CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Entity is granted an extension of time of 60 days from the date of this letter to file Form 8832 with the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for that purpose. Provided Entity files Form 8832 with the appropriate service center within 60 days from the date of this letter, the Form 8869 filed by Entity for Z effective on D3 is a valid election effective on D3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) 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 your authorized representative.

Sincerely,  
**/s/Paul F. Kugler**  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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