Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
      , ID No.
Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B01 – PLR-133419-03
Date: Sept 24 2003

<u>X</u>   =

<u>State A</u>   =

<u>Date 1</u>   =

<u>Year 1</u>   =

Dear   :

This letter responds to a letter dated May 14, 2003, written on behalf of <u>X</u>, requesting a ruling, under section 301.9100-3 of the Procedure and Administration Regulations, that <u>X</u> be granted an extension of time to elect to be treated as an association taxable as a corporation under section 301.7701-3(c) and section 1362(b)(5) of the Internal Revenue Code that <u>X</u> be granted relief from filing a late S corporation election.

<u>FACTS</u>

According to the information submitted, <u>X</u> , a <u>State A</u> limited liability company, was formed on <u>Date 1</u>. At that time, <u>X</u> desired to be treated as an S corporation for federal tax purposes. <u>X</u> timely filed a form 1120S for the <u>Year 1</u> tax year. <u>X</u> later

discovered that due to inadvertence, neither the Form 8832, Entity Classification Election, nor the Form 2553, Election by a Small Business Corporation, was timely filed.

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 a single owner can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a disregarded entity.

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, with the service center designated on the form.

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.

Sections 301.9100-1 through 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 extension 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.

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 section 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: (1) no section 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and section 1362(b)(3) shall not apply.

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of section 301.9100-3. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 1. In addition, X has established reasonable cause for not making a timely S election and is entitled to relief under section 1362(b)(5).

Accordingly, provided that X otherwise qualifies as an S corporation and that X files the Form 8832 as provided above, we conclude that X will be treated as an S corporation effective Date 1. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

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 Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

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.

PLR-133419-03

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to the first and second listed authorized representative.

Sincerely,

/s/ Heather C. Maloy

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

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

cc: