

**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:B1 – GENIN-154649-04

Date:

June 20 2005

Taxpayer = [REDACTED]

Dear [REDACTED]:

This responds to your letter, dated September 29, 2004, in which it was requested that we recognize Taxpayer's entity classification election and your S corporation election effective August 18, 2003.

Section 301.7701-3(b) 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<sup>o</sup>) can elect its classification for federal tax purposes. A business entity<sup>o</sup> is an entity recognized for federal tax purposes that is not properly classified as a trust under ' 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-2(a). An entity cannot make an entity classification election prior to the date on which it is recognized for federal tax purposes. Taxpayer was not recognized until September 3, 2003.

Section 301.7701-3(b)(1) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members and the entity is disregarded as separate from its owner if it has a single owner. To elect to be classified other than as provided in ' 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election will be effective on the date specified on the Form 8832, provided that the entity making the election is recognized for federal tax purposes on that date, or on the date filed if no such date is specified. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

A corporation, which meets the definition of a small business corporation under section 1362(a) of the Internal Revenue Code, may elect to be treated as an S corporation. In order for an S corporation election to be effective for the taxable year in which it is made, it must be made within the first two and one-half months of the corporation's taxable year. Section 1362(b)(2). If an S election is made after that time,

then the corporation will not be treated as an S corporation until the taxable year following the one in which the S election was filed. Section 1362(b)(3). An election made after the first two and one-half months of the taxable year in which it is intended to be effective may be treated as effective if the Secretary determines that there was reasonable cause for the corporation's failure to make a timely election. Section 1362(b)(5).

Section 301.9100-1(c) allows the Commissioner to grant a reasonable extension of time for making a regulatory election under the rules set forth in ' ' 301.9100-2 and 301.9100-3. Section 301.9100-1(b) defines a regulatory election as an election having a due date prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. An entity classification election is a regulatory election. Section 301.9100-3 provides extensions for time for making these elections.

Requests for relief under ' 301.9100-3 must be requested in the form of a private letter ruling. Relief 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).

Unfortunately, you do not qualify for relief under Rev. Proc. 2002-59 for 2003 because you submitted your request for relief after the due of the corporation's return for that year. To request relief for both a late entity classification election, and a late S corporation election, please refer to Rev. Proc. 2005-1. In addition, Rev. Proc. 2005-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$7,000. However, taxpayers with gross income of less than \$1 million on their tax return for the most recent 12-month taxable year, qualify for a **reduced user fee** in the amount of **\$625**. If you qualify for the reduced fee, you must include a statement certifying your gross income for the last 12-month taxable year. Otherwise, the higher fee will apply.

If you decide to submit a formal request for a private letter ruling, please review Appendix B of Rev. Proc. 2005-1, and be certain to include all required procedural statements. Also include the proper user fee and any documents that substantiate your intent to be an S corporation from inception. Please refer your request to our office by adding the following to the address:

Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Direct to: CC:PSI:1  
Room 5002

We hope that this information is helpful to you. If you have additional questions, please contact \_\_\_\_\_ at \_\_\_\_\_ (not a toll-free call).

Sincerely,

/s/ Dianna K. Miosi

Dianna K. Miosi  
Chief, Branch 1  
Office of Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Announcement 97-4  
Rev. Proc. 2005-1