

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determinations letters.
(Also Part 1, §§ 7701; 301.7701-1, 301.7701-2, 301.7701-3, 301.9100-1, 301.9100-3)

Rev. Proc. 2009-~~XX~~

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 7701 of the Internal Revenue Code both for an eligible entity that requests relief for a late classification election filed within 36 months and 75 days of the requested effective date of the eligible entity's classification and for those eligible entities that are still required to request a letter ruling in order to make a late entity classification election.

SECTION 2. BACKGROUND

Section 301.7701-3(a) of the Procedure and Administration Regulations provides in part 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 as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association or a partnership, and an

eligible entity with a single owner can elect to be classified as an association (and thus as a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner. Section 301.7701-3(b) provides a default classification for an eligible entity that does not file an entity classification election. Thus, an entity classification election is necessary only when an eligible entity chooses to be classified initially as other than its default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(c)(1)(i) provides the general rules for the time and place for filing an entity classification election. Section 301.7701-3(c)(1)(i) provides that, except as provided in paragraphs (c)(1)(iv) (limitation) or (c)(1)(v) (deemed elections) of § 301.7701-3, an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, "Entity Classification Election," with the IRS campus designated on Form 8832. An election will not be accepted unless all of the information required by the form and instructions, including the taxpayer identifying number of the entity, is provided on Form 8832. See § 301.6109-1 for rules on applying for and displaying Employer Identification Numbers.

Section 301.7701-3(c)(1)(ii) provides that an eligible entity required to file a Federal tax or information return for the taxable year for which an election is made must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective.

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. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed. If an election specifies an effective date more than 12 months from the date on which the election is filed, it will be effective 12 months after the date it was filed.

Section 301.7701-3(d)(1) provides in general that a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes.

Under § 301.9100-1(c) and -3(a), the Commissioner may grant a reasonable extension of time to make a regulatory election or certain statutory elections 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.

Section 301.9100-1(b) defines the term "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. An entity classification election made pursuant to § 301.7701-3(c) is a regulatory election.

The Commissioner has authority under § 301.9100–1 and § 301.9100–3 to grant an extension of time if a taxpayer fails to file a timely election under § 301.7701–3(c). Section 301.9100–3 provides that the Commissioner will grant an extension of time when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Rev. Proc. 2002–59, 2002–2 C.B. 615, provides guidance under § 301.7701-3 for entities newly formed under local law to request relief for a late initial classification election filed by the due date of the first federal tax return (excluding extensions) of the entity’s desired classification for the year of the entity’s formation.

SECTION 3. SCOPE

This revenue procedure modifies and supersedes Rev. Proc. 2002-59 by, in particular, extending the time for filing a late entity classification election to within 36 months and 75 days of the requested effective date of the eligible entity’s classification. Thus, the extended filing period no longer is limited, as it was under Rev. Proc. 2002-59, to only entities newly formed under local law requesting relief to file an election on its date of formation and to the due date for the first federal tax return (excluding extensions) of the entity’s desired classification for the year of the entity’s formation. This procedure is the exclusive means for obtaining relief for a late entity classification election for those entities that satisfy the requirements set forth in Section 4.01 of this revenue procedure and is in lieu of the letter ruling procedure that is used to obtain relief for a late entity classification election under § 301.9100–1 through § 301.9100–3. Accordingly, user fees do not apply to corrective action under this revenue procedure.

An eligible entity that seeks to be classified as an S corporation may qualify for alternative relief under § 301.7701-3(c)(1)(v)(C) which treats an entity as having made a classification election to be treated as an association when it timely elects to be an S corporation under section 1362(a)(1). Also, see Rev. Proc. 2004-48, 2004-2 CB 172, and Rev. Proc. 2007-62, 2007-41 IRB 786, and their successors for special rules applicable to late S corporation elections and late entity classification elections. An entity that is not eligible for relief under this revenue procedure, or is denied relief by the IRS Campus, may request relief by applying for a letter ruling. Additionally, eligible entities that do not qualify for relief under this revenue procedure because they do not satisfy all of the requirements set forth in Section 4.01 and who request a letter ruling for late entity classification relief either must include the affirmative representation in Section 4.04 or a statement that the entity cannot make the affirmative representation in Section 4.04 as part of their letter ruling request. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2009-1, 2009-1 I.R.B. 1 (or its successor).

SECTION 4. RELIEF FOR LATE CLASSIFICATION ELECTIONS

.01 Eligibility for Relief. An entity is eligible for relief under section 4.03 of this revenue procedure for a late classification election if the following requirements are met:

(1)(a) the entity failed to obtain its requested classification as of the date of its formation or upon becoming relevant within the meaning of § 301.7701-3(d) solely because Form 8832 was not filed timely under § 301.7701-3(c)(1); or

(b) the entity failed to obtain its requested change in classification (subject to the limitations of § 301.7701-3(c)(1)) solely because Form 8832 was not filed timely under

§ 301.7701-3(c)(1)(iv);

(2) the eligible entity seeking an extension of time to make an entity classification election timely filed (including extensions) all required federal tax returns or information returns consistent with its requested classification. Under this revenue procedure, federal tax returns or information returns will not be deemed to have been filed consistently with the requested election, if a return with respect to the eligible entity is filed inconsistently with the requested election and then files an amended return consistently with the intended election, even if the amended return is filed by the due date of the return including extensions. If the eligible entity is not required to file a federal tax return or information return, each affected person, who is required to file a federal tax return or information return, must have timely (including extensions) filed all such returns consistent with the entity's requested classification. An affected person is either:

(a) with respect to the date the eligible entity requests for its election to first become effective, a person who would have been required under § 301.7701-3(c)(1)(ii) to attach a copy of the Form 8832 for the eligible entity to its federal tax or information return for the taxable year of the person which includes that date; or

(b) with respect to any date after the entity's requested effective date of the election, a person who would have been required under § 301.7701-3(c)(1)(ii) to attach a copy of the Form 8832 for the eligible entity to its federal tax or information return for the person's taxable year that includes that subsequent date had the election first become effective on that date;

(3) the eligible entity has reasonable cause for its failure to timely make the

entity classification election; and

(4) 36 months and 75 days from the requested effective date of the eligible entity's classification election have not passed.

.02 Procedural Requirements for Requesting Relief. Within 36 months and 75 days from the effective date of the eligible entity's requested classification election, the eligible entity must file with the applicable IRS Campus (determined in accordance with the instructions to Form 8832) a completed Form 8832, signed in accordance with § 301.7701-3(c)(2). The Form 8832 must indicate that it is being filed pursuant to this revenue procedure in accordance with the Form 8832 and accompanying instructions. The Form 8832 must include an affirmative statement that the elements required for relief in section 4.01 of this revenue procedure have been satisfied and provide space for the statement explaining the reason for the failure to file a timely classification election. A taxpayer that satisfies these elements will be deemed to have established to the satisfaction of the Commissioner that it acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. (Until Form 8832 is modified to include the affirmative statements and space for a reasonable cause statement as contained in this revenue procedure, taxpayers should write "Filed Pursuant to Rev. Proc. [20XX-XX]" at the top of Form 8832 and attach these affirmative statements to their Form 8832 that is filed with the applicable IRS campus. The copy of the Form 8832 that is required under §301.7701-3(c)(1)(ii) to be attached to the taxpayer's return does not need the writing at the top of the Form 8832 or the written attachments.)

.03 Relief for Late Entity Classification Elections. Upon receipt of a completed

Form 8832 requesting relief under section 4.01 of this revenue procedure, the IRS campus will determine whether the requirements for granting additional time to file the late entity classification election have been satisfied and will notify the entity of the result of its determination.

.04 Eligible entities that do not meet all of the eligibility requirements under section 4.01 of this revenue procedure. Eligible entities requesting a letter ruling because they do not meet all of the eligibility requirements of section 4.01 of this revenue procedure, must either include the following representation as part of the entity's request for a letter ruling or a representation that they do not qualify to do so: "All required U.S. tax and information returns of the entity (or if the entity was not required to file any such returns under the desired classification then all required U.S. tax and information returns of the entity's interest holders) were timely (including extensions) and consistently filed as if the entity classification election had been in effect on the requested date. No U.S. tax and/or information returns were filed inconsistently with those described in the prior sentence."

SECTION 5. EFFECTIVE DATE

.01 In general. This revenue procedure is effective **[INSERT DATE OF PUBLICATION]**, the date of publication of this revenue procedure in the Internal Revenue Bulletin. This revenue procedure applies to requests pending with the service center pursuant to Rev. Proc. 2002-59 on **[INSERT DATE OF PUBLICATION]**, and to requests received thereafter. It also applies to all ruling requests pending in the national office on **[INSERT DATE OF PUBLICATION]**, and to requests for relief received thereafter.

.02 Transition rule for pending letter ruling requests. If an entity has filed a request for a letter ruling seeking relief for a late entity classification election and that letter ruling request is pending in the national office on **[INSERT DATE OF PUBLICATION]**, the entity may withdraw that letter ruling request and receive a refund of its user fee. However, the national office will process letter ruling requests pending on **[INSERT DATE OF PUBLICATION]**, unless, prior to the earlier of **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION]**, or the issuance of the letter ruling, the entity notifies the national office that it will withdraw its letter ruling request.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–59 is modified and superseded.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number **[INSERT NUMBER HERE]**.

The collection of information in these regulations is in sections 4.02 and 4.04 of this revenue procedure. The information will help the IRS determine if an eligible entity meets the requirements of section 4.01 of this revenue procedure. The collection of information is required to obtain permission to file a late entity classification election. The information will be reported on Form 8832 or submitted as part of a letter ruling request. The time needed to complete and file a letter ruling request or a Form 8832 will vary depending on individual circumstances. The estimated burden for eligible entities filing a letter ruling request or Form 8832 are included in the estimates shown in

the Paperwork Reduction Act of the annually published letter ruling revenue procedure and the instructions for Form 8832 respectively.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard T. Probst of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Richard T. Probst at (202) 622-3060 (not a toll free call).