

Rev. Proc. 99-51

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 99-3, 1999-1 I.R.B. 103, which sets forth areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Internal Revenue Service will not issue advance rulings or determination letters.

SECTION 2. BACKGROUND

Section 301.7701-3 of the Procedure and Administrative Regulations allows an eligible entity to elect to be classified as an association taxable as a corporation for federal tax purposes. Under § 301.7701-3(a), an eligible entity is a business entity not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). A state law partnership is an eligible entity. Consequently, a state law limited partnership may elect to be classified as an association taxable as a corporation for federal tax purposes.

Section 1362(a) of the Internal Revenue Code allows an eligible corporation to elect to be taxable as an S corporation. For a corporation to be eligible to elect under § 1362(a), the corporation must be a small business corporation. Section 1361(b)(1)(D) requires that a small business corporation have no more than a single class of stock. A general partnership

interest includes rights and obligations not included in a limited partnership interest. If these obligations and rights result in general and limited partnership interests in a limited partnership having non-pro rata distribution rights, such interests are different classes of stock for purposes of § 1361(b)(1)(D).

Given the factual difficulties involved in determining whether the differences between the rights and obligations of general and limited partnership interests give rise to a second class of stock, the issue of whether a state law limited partnership complies with the single class of stock requirement is under extensive study. Accordingly, advanced rulings will not be provided on the issue until the Service resolves it through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

SECTION 3. PROCEDURE

Rev Proc. 99-3 is amplified by adding the following to section 5.01:

Section 1361. — Definition of a Small Business Corporation. — Whether a state law limited partnership electing under § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the National Office and any submitted after the date of this publication.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99-3 is amplified.

SECTION 6. DRAFTING INFORMATION

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