

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Refer Reply To:  
CC:PSI:3 PLR-119258-01  
Date:  
May 6, 2003

LEGEND

X =

Y =

A =

d1 =

d2 =

Country =

State =

This letter responds to your letter dated March 30, 2001, and subsequent correspondence, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to make an election to be disregarded as an entity separate from its owner under § 301.7701-3.

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## FACTS

According to the information submitted, X was formed on d1 as a limited liability company under the laws of Country. At the time of formation, the sole member of X was A. On d2, A contributed all his shares in X to Y, a State limited liability company. A and X intended X to be disregarded as an entity separate from its owner effective d1. However, due to inadvertence, X failed to file timely Form 8832, Entity Classification Election.

## LAW AND ANALYSIS

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3 and 301.7701-4. Section 301.7701-3(a) 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) can elect its classification for federal tax purposes as provided in § 301.7701-3.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-(b)(3), unless the entity elects otherwise, a foreign eligible entity is a partnership if it has two or more members and at least one member does not have limited liability, an association if all members have limited liability, or disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides that a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing a Form 8832 with the service center designated on the Form 8832.

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 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.

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Under § 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. Section 301.9100-1(b) defines “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register.

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 a regulatory election. Section 301.9100-1(a).

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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

## CONCLUSION

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an election under § 301.7701-3 to be treated as a disregarded entity for federal tax purposes effective d1. X must file a Form 8832 within the extension period with the appropriate service center and attach a copy of this letter to its Form 8832. A copy is included for that purpose.

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. Specifically, no opinion is expressed or implied as to whether X is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

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In accordance with the power of attorney on file with this office, we are sending a copy of this letter to X and to X's other authorized representative.

Sincerely yours,

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

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

cc: