

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02 – PLR-157460-03

Date:
December 1, 2003

Legend

A =

X =

Y =

Z =

Country =

State =

Date 1 =

Dear :

This letter responds to your letter dated September 16, 2003, and subsequent correspondence, submitted on behalf of X, requesting a ruling that X be granted an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations in which to elect to be treated as an association taxable as a corporation for federal tax purposes under § 301.7701-3(c).

According to the information submitted, X is a lower tiered entity of A, a U.S. corporation incorporated in State. X is a company without limited liability that was formed on Date 1 under the laws of Country. X represents that under § 301.7701-3(a), X is an eligible entity that is not required to be classified as a corporation for federal tax purposes. At the time of X's formation, X had two members, Y and Z. Both Y and Z

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could be held liable for the debts of or claims against X by reason of each being a member of X. Thus, in the absence of an election pursuant to § 301.7701-3(c), X would be treated as a partnership under § 301.7701-3(b)(2)(i)(A). X intended to make an election pursuant to § 301.7701-3(c) to be treated as an association taxable as a corporation effective Date 1. However, X inadvertently failed to timely file Form 8832, Entity Classification Election.

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

Section 301.7701-3(b)(2)(ii) provides that for purposes of section 301.7701-3(b)(2)(i), 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) allows an entity to elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the service center designated on that Form. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after that filing date.

Section 301.7701-3(c)(2)(ii) provides that if an election is to have a retroactive effective date, each person who was an owner between the date the election is to be effective and the date the election is filed, and who is not an owner at the time the election is filed, must also sign the election.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary time extension. Under section 301.9100-3, a request for relief will be granted when the taxpayer provides evidence proving 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.

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Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of § 301.9100-1 and § 301.9100-3. As a result, X is granted an extension of time for making the election to be classified as an association taxable as a corporation for federal tax purposes, effective Date 1, until 60 days following the date of this letter. X should make the election by filing Form 8832 with the appropriate service center. The Form 8832 must be signed by both Y and Z and any person who was an owner of X between the date the election should have been filed and the date it is actually filed, even if that person is not an owner of X at the time the election is filed. A copy of this letter should be attached to the Form. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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.

Sincerely,

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

Enclosures: 2

Copy of this letter

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