

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 – PLR-169158-03

Date:

February 23, 2004

Legend

X =

X1 =

X2 =

Y1 =

D1 =

D2 =

Dear

This responds to the letter dated December 3, 2003 together with subsequent correspondence, in which you requested relief under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as an association taxable as a corporation.

FACTS

According to the information submitted, X was incorporated in State in Y1. Also in Y1, X organized a wholly owned subsidiary X1, under the laws of State. On D1, X1 organized a wholly owned subsidiary X2, under the laws of State. X2 intended to be classified as corporation on D2, but inadvertently failed to timely file the election.

LAW AND ANALYSIS

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”) can elect its classification for federal tax purposes. A “business entity” 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 eligible entity with one member can elect either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or as an entity disregarded as separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic eligible entity elects otherwise, the entity is a disregarded entity if it has a single member.

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 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).

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.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions for time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 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).

CONCLUSION

Based solely on the facts submitted and the representations made, the requirements of § 301.9100-3 have been satisfied. Accordingly, X2 is granted an extension of time of sixty (60) days from the date of this letter to elect to be treated as a corporation effective as of D2. The election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly set forth above, no opinion is expressed or implied concerning the tax consequences of the transactions described above under any other provision of the Internal Revenue Code. Specifically, no opinion is expressed concerning whether X2 is an eligible entity.

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.

Pursuant to Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

/s/ Heather C Maloy

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

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

cc: