

Internal Revenue Service

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Date:

March 15, 2004

Legend:

A =

B =

C =

D =

E =

F =

G =

Country =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear _____ :

This responds to a letter dated September 30, 2003, submitted on behalf of A and its subsidiaries, requesting relief under §§ 301.7701-3(c)(1)(iv) and 301.9100-3 of the Procedure and Administration Regulations for G to elect to change its federal tax classification effective D6.

Facts

A is the direct parent of B and C. B is the direct parent of D. E was the direct parent of F. F was the direct parent of G. G was organized in Country on D1. On D2, G, which had qualified as an association under § 301.7701-3(b)(2), elected to be treated as a disregarded entity for federal tax purposes. On D3, C purchased a majority of the U.S. assets of E. As part of the purchase, C was granted an option to purchase the stock of F. On D4, C exercised the option. On D5, D purchased G from F.

In conjunction with this change in the ownership of G, G desires to change its federal tax classification. Since the sixty month post election period under § 301.7701-3(c)(1)(iv) had not expired, G submitted this ruling request seeking the Commissioner's consent to make an elective change in classification.

Furthermore, G intended to make the elective change in entity classification effective D6. However, G can no longer timely file a Form 8832, Entity Classification Election, to make the election effective as of D6.

Law and Analysis

Section 301.7701-3(c)(1)(i) provides, in relevant part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(1).

Section 301.7701-3(c)(1)(iv) provides that if an eligible entity makes an election under § 301.7701-3(c)(1)(i) to change its classification (other than an election made by an existing entity to change its classification as of the effective date of § 301.7701-3(c)(1)(iv)), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. The Commissioner, however, may permit an eligible entity to make a new election before the sixty month period expires if more than 50 percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on effective date of the entity's prior election.

Section 301.7701-3(c)(1)(i) allows an eligible entity to elect to change its classification by filing Form 8832, 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 effective date specified on Form 8832 can not 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.

Section 301.7701-3(g)(1)(iii) provides that if an eligible entity classified as an association elects under § 301.7701-3(c)(1)(i) to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association.

Section 301.7701-3(g)(3)(i) provides that the transactions that are deemed to occur as the result of an elective change in entity classification are treated as occurring immediately before the close of the day before the election is effective.

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

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner will grant relief 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 interest of Government.

Conclusion

Based solely on the representations made and on the information submitted, we conclude that more than 50 percent of the ownership interests in G as of D6, the desired effective date of G's subsequent election to be treated as an association, were owned by the person (D) that did not own any interests in G on D2, the effective date of G's previous election to be treated as a disregarded entity. Therefore, we grant permission for G to elect to change its classification for federal tax purposes. Further, we conclude that G has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, G is granted an extension of time of 60 days following the date of this letter to make the election to be classified as an association for federal tax purposes effective D6. G should make the election by filing Form 8832 with the Philadelphia Service Center. A copy of this letter should be attached to that Form.

The ruling in this letter is based on information and representations submitted by taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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 Internal Revenue Code. Specifically, no opinion is expressed regarding any tax consequences under subpart F of the Code as a result of any of the transactions described in this letter ruling. In addition, no opinion is expressed concerning whether G is an eligible entity.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes