

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-108139-05

Date:

June 15, 2005

Legend:

X =

Y =

Z =

State =

Date 1 =

Date 2 =

Entity 1 =

Entity 2 =

Dear _____ :

This letter is in response to your request, dated February 7, 2005, on behalf of X and Y, seeking an extension under §301.9100 of the Procedure and Administration Regulations to file an election to treat Z as an entity disregarded as separate from its owner for federal tax purposes.

Facts

Based on the material submitted and the representations contained within, we understand the relevant facts to be as follows. X is a REIT formed in accordance with the laws of State. Y is a foreign partnership in which X indirectly owns an interest. Z was formed by Y on Date 1 as an Entity 1. On Date 2, Z converted to Entity 2. Z inadvertently did not file an election to be treated as an entity disregarded as separate from its owner effective Date 2.

Law and Analysis

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 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 Code. Section 301.7701-2(a). An eligible entity with a single owner can elect either to be classified as an association (and thus a corporation under § 301.7701- 2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association taxable as a corporation if all members have limited liability, unless the entity makes an election to be treated otherwise. If a foreign eligible entity has one owner, it may elect to be treated as a disregarded entity pursuant to the rules in § 301.7701-3(c). If a foreign eligible entity has more than one owner, it may elect to be treated as a partnership pursuant to the rules in § 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to 75 days prior to the date the form is filed or up to 12 months after the date on which the form is filed.

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 can 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 the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

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 an 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 for time for making elections that do not meet the requirements of section 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Z is granted an extension of time of sixty (60) days from the date of this letter to elect to be treated as an entity disregarded as separate from its owner for federal tax purposes, effective Date 2. 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 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.

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

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to the taxpayer's representatives.

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes

cc: