

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:PSI:3 PLR-142190-04

Date:

September 30, 2005

Company:

LLC 1:

LLC 2:

M:

Country:

a:

b:

c:

d:

Dear _____ :

This letter responds to a letter from your authorized representative dated August 3, 2004, as well as additional correspondence, submitted on behalf of Company, requesting a ruling under § 301.7701-3(c)(1)(iv) of the Procedure and Administration Regulations. Specifically, Company is requesting the Service's consent to change its classification from a disregarded entity to an association taxable as a corporation, effective d.

FACTS

Company was formed on a under the laws of Country by two U.S. corporations. It was treated as an association taxable as a corporation for federal tax purposes under § 301.7701-3(b)(2)(i)(B). It elected partnership status effective b. M, a U.S. citizen, purchased 100 percent of Company on c through two wholly-owned U.S. LLCs (LLCs 1 and 2). The partnership was considered terminated at this time, with M acquiring all of Company's assets with a fair market value basis. See Rev. Rul. 99-6, 1999-1 C.B. 432. LLCs 1 and 2 are disregarded as entities separate from their owner for federal tax purposes under § 301.7701-3(b)(1)(ii); thus, Company was treated as a disregarded entity for federal tax purposes under § 301.7701-3(b)(2)(i)(C). Company wants to elect to be treated as an association under U.S. law, effective d, and has asked for the Service's consent under § 301.7701-3(c)(1)(iv) to change its classification. M, who owned all of Company on d (the intended effective date of Company's proposed classification change) had no ownership interest in Company on b (the effective date of Company's prior classification change).

LAW AND REGULATIONS

Section 301.7701-3(a) provides, in part, 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) may elect its classification for federal tax purposes. An eligible entity with at least two members may elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. An eligible entity with a single owner may elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that, unless it elects otherwise, a domestic eligible entity is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(b)(2)(i)(B) provides that, unless it elects otherwise, a foreign eligible entity is an association if all members have limited liability.

Section 301.7701-3(b)(2)(i)(C) provides that, unless it elects otherwise, a foreign eligible entity is disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(c)(1)(i) provides in general that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center.

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Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified on 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, or more than 12 months after, the date the election is filed.

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, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty 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 the effective date of the entity's prior election.

Section 301.7701-3(g)(1)(iv) provides that if an eligible entity that is disregarded as an entity separate from its owner elects under § 301.7701-3(c)(1)(i) to be classified as an association, the owner of the eligible entity will be deemed to contribute all of the assets and liabilities of the entity to the association in exchange for the stock of the association.

Section 301.7701-3(g)(3)(i) provides that an election under § 301.7701-3(c)(1)(i) that changes the classification of an eligible entity is treated as occurring at the start of the day for which the election is effective. Any transactions deemed to occur under § 301.7701-3(g) as a result of a change in classification are treated as occurring immediately before the close of the day before the election is effective.

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 Internal Revenue Code, except subtitles E, G, H, and I.

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.

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 on the facts and representations submitted, we consent to Company changing its classification for federal tax purposes less than 60 months after its previous classification change. Further, Company is granted an extension of 60 days from the date of this letter to elect under § 301.7701-3 to be classified as an association taxable as a corporation, effective d. A copy of this letter should be attached to the Form 8832, to be filed with the appropriate service center within the extension period.

Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs and Special Industries)

enclosures: copy of this letter
copy for § 6110 purposes

cc: