

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:PSI:B01

PLR-144601-05

Date:

December 23, 2005

Legend

X =

Y =

Z =

A =

B =

Country =

D1 =

D2 =

Dear

This is in response to a letter dated August 24, 2005, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be an entity disregarded as separate from its owner for federal income tax purposes.

FACTS

Based upon the information submitted and representations made within your request, X was formed as a Country limited liability company on D1. On D1, X was owned 99 percent by Y and 1 percent by Z. On D2, Y and Z sold their interests in X to A and B. B is a wholly owned subsidiary of A, and is an entity disregarded as separate

from its owner, A, for U.S. tax purposes. It was intended that a Form 8832, *Entity Classification Election*, electing to be disregarded as separate from its owner would be filed on behalf of X effective D2, but due to inadvertence, the Form 8832 was not timely filed.

LAW AND ANALYSIS

Section 301.7701-2(a) generally provides that a business entity is any 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 301.7701-3(a) further provides that an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(a) provides that so long as a business entity is not classified as a corporation under § 301.7701-2(b)(1), or (3)-(8) (an eligible entity), it may elect its classification for federal tax purposes. Section 301.7701-3(b)(1)(i) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing a Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The date specified on Form 8832 cannot 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(c)(1)(iv) provides in relevant part 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, an election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph.

Rev. Rul. 2004-77, 2004-31 C.B. 119 (2004) provides that if an eligible entity has two owners under local law, but one of the owners is, for U.S. federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

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 Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term regulatory election as

including an election with a deadline prescribed by a regulation published in the Federal Register.

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 301.9100-2 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 solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of sixty (60) days from the date of this letter to elect to be an entity disregarded as separate from its owner for federal income tax purposes, effective 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 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.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to your authorized representatives.

Sincerely,

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

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