

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-140066-05
Date: November 14, 2006

Legend

X =

Y =

Country =

Date 1 =

Date 2 =

Dear :

This is in response to a letter dated July 26, 2005 requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to treat Y as an entity disregarded as separate from its owner for federal tax purposes under § 301.7701-3(c).

FACTS

According to the information submitted and representations made within the request, X is the ultimate owner of an affiliated group of entities. Among this affiliated group is Y, which is an entity that was formed under the laws of Country. On Date 1, X acquired Y. X timely made a section 338 election relating to its acquisition of Y. Due to inadvertence, a Form 8832, *Entity Classification Election*, to treat Y as an entity disregarded as separate from its owner effective Date 2 was not filed.

LAW AND ANALYSIS

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, unless the entity makes an election to be treated otherwise, a foreign eligible entity is treated as an association taxable as a corporation if all members have limited liability. If a foreign eligible entity has only 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) further provides that an entity classification election must be filed on Form 8832, *Entity Classification Election*, 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.

Section 301.7701-3(c)(1)(iii) provides that an election made under section 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no date is specified on the election form. The effective 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. If a purchasing corporation makes an election under section 338 regarding an acquired subsidiary, an election under section 301.7701-3(c)(1)(i) for the acquired subsidiary can be effective no earlier than the day after the acquisition date (within the meaning of section 338(h)(2)).

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 upon the information submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, an extension of 60 days from the date of this letter is granted to elect to treat Y as disregarded as an entity separate from its owner for federal tax purposes, effective Date 2. The entity classification election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose.

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 representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

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