Internal Revenue Service

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Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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PLR-108127-07
Date:
July 02, 2007

LEGEND:

X =

Y =

Z =

Country =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

a =

b =

c =

Dear :

This letter responds to a letter dated February 9, 2007, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an entity classification election under § 301.7701-3.

X was formed on Date 1 under the laws of Country as a limited partnership. For Country tax purposes, the limited partners of X on Date 1 were Y and Z. Y is the parent of an affiliated group of corporations, including Z, which files a consolidated tax return for U.S. federal income tax purposes. X was formed to serve as a financing vehicle through which to acquire the outstanding interests in a joint venture from an unrelated third party. To this end, in Year 1, X made a loan of approximately a to an affiliate, which then used the funds to acquire the outstanding interests in the joint venture.

Y was advised by its outside advisors to file an election to treat X as a corporation for U.S. federal tax purposes. Y maintains that it was important for Y to have control over when the interest income attributable to the debt held by X would be reported for U.S. tax purposes. A partnership would allow for no control, as the interest income would simply flow through to the partners, whereas a corporation would first need to distribute the income. Nonetheless, on Date 2, X filed Form 8832, Entity Classification Election, electing to be classified as a partnership for federal tax purposes, effective Date 3. The form was signed by the managing director of X, who was also the chief tax officer of Y. Y maintains that the election was a typographical error and that, consistent with the advice it received, it intended to check the box marked 'corporation' on the Form 8832. Apparently believing that X had properly elected to be classified as a corporation, for Year 1, Year 2, and Year 3, Y filed Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, with respect to X.

The mistaken election was first discovered by employees of Y in Year 3. Later in Year 3, an IRS examination team examining Y's Year 1 tax return questioned representatives of Y as to why it was unable to locate disclosure information relating to X's partnership activities. The representatives explained that the initial election was a typographical error and that Y always intended to treat X as a corporation for federal tax

purposes. Y did not, however, take any action at that time to file a ruling request under § 301.9100-3 seeking an extension of time for X to file another election. Y maintains that it did not do so because it believed that relief under § 301.9100-3 was unavailable for mistaken (as opposed to late) elections. In addition, Y claims that it was attempting to settle the issue at the examination level.

In Year 4, Y and Z transferred their interests in X to a foreign affiliate as part of a reorganization involving a number of subsidiaries of Y. Apparently still believing that X was a corporation, Y concluded that the transfer of X was tax-free under the applicable corporate reorganization provisions. Later in Year 4, Y revisited the transfer of X in light of the IRS examination team's queries regarding the status of X. In consultation with its outside advisors, Y concluded that even if X were classified as a partnership for federal tax purposes, the transfer, while taxable under § 367(a), would nonetheless not result in any tax due. In reaching this conclusion, Y and its advisors failed to take into account currency gains attributable to the intercompany debt held by X, which on the date of transfer amounted to approximately $b.

Also in Year 4, the IRS examination team issued the 30-day letter for Year 1 treating X as a partnership and including approximately $c of interest income in the income of Y for Year 1. Y later filed a Protest claiming that it would be seeking relief under § 301.9100-3 with respect to the mistaken election, but no immediate action was taken.

In Year 5, Y filed a Form 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships, for the Year 4 tax year and reported the interest income attributable to the intercompany debt held by X on its federal consolidated tax return. Y maintains that it filed Form 8865 rather than Form 5471 because it was told by the IRS examination team that this was required, as well as to avoid penalties. Although Y claims that it still intended to seek relief under § 301.9100-3, no such request was filed in Year 5.

In Year 6, an IRS examination team examining Y's Year 4 return inquired as to why Y had not reported the currency gains from the transfer of X on its Year 4 tax return. At this point Y for the first time realized that its earlier analysis of the Year 4 transfer of X was mistaken and that X's status as a partnership meant an additional income inclusion of approximately $b under § 367(a). Y then began to prepare the aforementioned ruling request on behalf of X.

Section 301.7701-3(a) provides 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") can elect its classification for federal tax purposes. 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(b)(2)(i) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is: (A) A partnership if it has two or more members and at least one member does not have limited liability; or (B) An association if all members have limited liability; or (C) 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 that to elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to seventy-five (75) days prior to the date the form is filed or up to twelve (12) months after the date on which the form is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 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. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 the election.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied, because X is deemed to have not acted reasonably and in good faith. Consequently, X is not granted an extension of time to elect under 301.9100-3(c) to be classified as an association taxable as a corporation.

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

Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 X's authorized representative.

Sincerely,

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

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

cc: