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Department of the Treasury  
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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:3

PLR-147742-07

Date:

April 24, 2008

LEGEND

X =

Y =

State =

Country =

Date =

Year1 =

Year2 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated October 18, 2007, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to file an election to be classified as an association taxable as a corporation under § 301.7701-3 effective Date.

FACTS

X was formed on Date as a State limited liability company. On Date, X was a wholly owned subsidiary of Y, a corporation formed under the laws of Country. Between Year1 and Year2, X and Y consulted repeatedly with legal and financial advisors regarding the business structure of X and Y. During each consultation, X was advised of the necessity for X to make an election to be treated as an association taxable as a corporation under § 301.7701-3. X was also advised regarding the adverse tax consequences of not making the necessary election. Because of X's delay in implementing the advice, a Form 8832, Entity Classification Election, electing to be treated as an association taxable as a corporation was not timely filed.

### LAW AND ANALYSIS

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 as provided in § 301.7701-3. 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, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides that unless an entity 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(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3, 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 a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

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

Section 301.9100-3 provides extensions 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 the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(3)(ii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election.

#### CONCLUSION

Based on the facts submitted and the representations made, we do not believe that either X or Y acted reasonably and in good faith, as required under § 301.9100-3. Specifically, we believe that X and Y were informed in all material respects of the required election and related tax consequences, but chose not to file the election. We therefore conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied. As a result, X is denied an extension of time to file Form 8832 to elect to be classified as an association taxable as a corporation for federal tax purposes effective Date.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed or implied as to whether X is otherwise eligible to make the election.

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

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In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

/s/

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

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes