

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

October 11, 2001

Legend

X =

X1 =

X2 =

a% =

b% =

D1 =

D2 =

D3 =

Country =

State 1 =

This responds to your letter dated, August 23, 2001 in which you requested relief under section 301.9100-3 of the Procedure and Administration Regulations to file an election under section 301.7701-3(c) to be treated as a disregarded entity for federal tax purposes.

Facts

X was formed on D1 in Country as a limited liability company. X1 holds a% interest in X. X2 holds b% interest in X. X1 was organized as a corporation in State and made a valid election to be taxed as an S corporation effective D2. X2 was organized as a corporation in State and is a wholly owned subsidiary of X1. X1 made a

valid election for X2 to be taxed as a QSub effective D3. The owners of X intended at all times for X to be treated as a disregarded entity. Inadvertently, X did not file an election to be treated as a disregarded entity.

Law and Analysis

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association taxable as a corporation if all members have limited liability, unless the entity makes an election to be treated otherwise. If a foreign eligible entity has only one owner, it may elect to be treated as a disregarded entity pursuant to the rules in section 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 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.

Under section 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 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 an 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 section 301.9100-2.

Requests for relief under section 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 the representations made, the requirements of section 301.9100-3 have been satisfied. As a result, X is granted an extension of time to elect to be treated as a disregarded entity for federal tax purposes, effective as of D1. The election should be made by following the procedure for filing Form 8832 within 60 days following the date of this letter. A copy of this letter should be attached to the election.

Except as expressly set forth above, no opinion is expressed or implied concerning the tax consequences of the transactions described above under any other provision of the Internal Revenue Code. Specifically, no opinion is expressed

concerning whether X is an eligible entity.

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.

Pursuant to Power of Attorney on file with this office, a copy of this letter is being sent to the requested tax representatives.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter