

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B1-PLR-155779-01
Date:
January 9, 2002

LEGEND:

X =

Y =

Country =

b =

n =

Date 1 =

Dear :

This letter responds to a letter dated June 25, 2001, and subsequent correspondence, submitted on behalf of X, requesting a ruling that it be granted an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations in which to elect to be treated as a partnership for federal tax purposes under section 301.7701-3(c).

FACTS

According to the information submitted, X was validly formed as a limited liability company under the law of Country on Date 1. Y, a domestic limited liability company, has been a b% shareholder of X since Date 1. The remaining shares are held equally by n non-US citizens. X and X's shareholders intended from inception to elect to classify X as a partnership for federal tax purposes. However, X failed to file the election timely.

It has been represented that, 1) under section 301.7701-3(a), X is a foreign entity that is not required to be classified as a corporation for federal tax purposes; and, 2) at all times since its organization X has had at least two members, each of whom has limited liability as defined in section 301.7701-3(b)(2)(ii).

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LAW AND ANALYSIS

Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owners if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides that for purposes of 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) allows an entity to elect to change its classification by filing Form 8832, Entity Classification Election, with the service center designated on that Form. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after that filing date.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary time extension. Under section 301.9100-3, a request for relief will be granted when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of 60 days from the date of this letter to file Form 8832, effective Date 1, with the appropriate service center. A copy of this letter should be attached to that Form. 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 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 the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

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

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