

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3-PLR-116453-01
Date:
January 10, 2002

Legend

Company =
Decedent =
Current Owners =

Country =
Date 1 =
Date 2 =
Date 3 =

Dear

This letter responds to your submission dated March 15, 2001, and subsequent correspondence, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that Company be permitted to file a Form 8832 to change its classification pursuant to § 301.7701-3(c) effective for Date 3.

FACTS

The following facts have been represented. Company was formed on Date 1 under the laws of Country. Company was originally owned by grantor trusts for the benefit of Decedent. On Date 2, ownership of Company passed to Decedent's estate. On Date 3, Decedent's estate closed, and ownership of Company was transferred to Current Owners. Company is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), and so may elect its classification for federal tax purposes. All owners of Company have had limited liability as defined under § 301.7701-3(b)(2)(ii), and so Company was classified as a corporation under the default rules of § 301.7701-3(b)(2)(i)(B). Company has represented that it was the intent of it, and Current Owners, that Company would be classified as a partnership as of Date 3. However, Form 8832, Entity Classification Election, to elect such classification was not filed timely.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(2)(i)(B) provides that, unless the entity elects otherwise, a foreign eligible entity is classified as an association if all members have limited liability.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner has discretion to 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) of all subtitles of the Code, except subtitles E, G, H, and I.

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.

Section 301.9100-3(a) provides that requests for relief 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.

CONCLUSION

Based on the facts submitted and representations made in the present case, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company has 60 days from the date of this ruling to file a Form 8832 to elect an initial classification as of Date 3. The Form 8832 must bear the signatures required by § 301.7701-3(c)(2)(iii). A copy of this letter should be attached with the election. A copy is included for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue 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. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Company's authorized representative.

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

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