

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1-PLR-126725-02

Date:

Nov 6 2002

X =

A =

Sub 1 =

Country =

Date 1 =

Date 2 =

Date 3 =

Dear .

This letter responds to a letter dated May 10, 2002, and subsequent correspondence, written on behalf of X, A, and Sub 1 requesting a ruling, under section 301.9100-3 of the Procedure and Administration Regulations, that Sub 1 be granted an extension of time for making an election to be treated as a disregarded entity for federal tax purposes under section 301.7701-3(c).

FACTS

According to the information submitted, on Date 1, X acquired the stock of A, a foreign entity. A had three subsidiaries, one of which was Sub 1. Elections to treat A and Sub 1 as disregarded entities were due no later than Date 3. A timely election was filed on behalf of A, but not Sub 1. At the time the election was due X and its tax advisor believed that various assets A intended to sell to X (and a related company) were owned directly by A. It was later discovered that those assets were owned instead by Sub 1. This led to X not being timely advised about the need to file an

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election to treat Sub 1 as a disregarded entity. This letter ruling request was filed upon discovery by X's tax advisor that the assets were owned by Sub 1 and that an election to treat Sub 1 as a disregarded entity should have been filed at the same time the election was filed for A.

LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 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 this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(2) provides, in part, that unless a foreign eligible entity elects otherwise it is an association if all of its members have limited liability.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the service center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 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 such 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.

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.

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 extension 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.

CONCLUSIONS

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Based solely on the facts submitted and the representations made, we conclude that Sub 1 has satisfied the requirements of section 301.9100-3. As a result, Sub 1 is granted an extension of time of sixty (60) days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 2. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express no opinion as to Sub 1's eligibility to request treatment as a disregarded entity in accordance with section 301.7701-3.

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

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to the first and second listed authorized representative.

Sincerely,
/s/ Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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