

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:PSI:B01 – PLR-125297-03

Date:

March 02, 2004

Legend:

X =

Z =

A =

B =

State =

Country =

D1 =

Y1 =

Y2 =

Y3 =

Dear :

This letter responds to a letter dated April 4, 2003, submitted on behalf of X, requesting a ruling that X be granted an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a partnership for federal tax purposes.

Facts

PLR-125297-03

According to the information submitted, X was organized in Y1 under the law of Country. X is owned by A and B, both of whom are citizens of Country. A and B have limited liability under the law of Country. On D1, X established Z, a State limited liability company. In Y3, X sold off its entire interest in Z.

X intended to elect to be treated as a partnership effective D1. However, X inadvertently failed to timely file the proper election.

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 if all members have limited liability, unless the entity makes an election to be treated otherwise. Section 301.7701-3(c) provides that an entity classification 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 § 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 Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

Section 301.9100-1 through 301.9100-3 provide the standards that 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 making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 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, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an

PLR-125297-03

extension of time of 60 days from the date of this letter to make an election to be treated as a partnership for federal tax purposes effective D1, provided that (1) X, Z, A, and B file proper U.S. tax returns for years Y2 through Y3 and (2) their Y3 tax returns include the income effectively connected with X's U.S. business resulting from the sale of X's interest in Z in Y3. X should make the election by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the form.

Except as specifically provided herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the 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.

Sincerely,

/s/ Heather C Maloy

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

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cc: