

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:PSI:B02 – PLR-165642-04

Date:  
October 04, 2005

Legend

X = EIN: \_\_\_\_\_

Y = EIN: \_\_\_\_\_

Country = \_\_\_\_\_

Date 1 = \_\_\_\_\_

Year 1 = \_\_\_\_\_

Dear \_\_\_\_\_ :

This responds to a letter dated December 14, 2004, and subsequent correspondence, submitted by X, requesting a time extension under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c).

Facts

The information submitted states that as part of a prearranged plan to reduce the capital gains taxes on the sale of appreciated assets, X was incorporated in Country on Date 1, and subsequently, Y transferred appreciated assets to X. In Year 1, X was notified by its accountants that the prearranged plan was ill-conceived and that because of the application of § 367(a), gain would be recognized on the transfer of assets from Y to X. In order to avoid recognizing gain on the transfer of assets, X requested an extension to elect to be treated as disregarded as an entity separate from its owner.

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### Law and Analysis

Section 301.7701-3(a) provides, in part, 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 as provided in this section. An eligible entity with a single owner can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a disregarded entity. Unless it elects otherwise, a foreign eligible entity is an association if all of its members have limited liability. 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 § 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 due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement 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 § 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 information submitted and the representations made, we conclude that the requirements of section §§ 301.9100-1 and 301.9100-3 have not been satisfied, because X is deemed to have not acted reasonably and in good faith. Consequently, X is not granted an extension of time to elect under § 301-7701-3(c) to be classified as an entity disregarded as an entity separate from its owner.

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Except as expressly provided herein, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code.

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 a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

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

Enclosures (3):

- Copy of this letter
- Copy for section 6110 purposes