

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-121286-04

Date: December 22, 2005

X =

Country =

A =

d1 =

Dear :

This letter responds to your letter dated April 12, 2004, requesting a ruling under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to make an election to be treated as a disregarded entity under § 301.7701-3.

FACTS

According to the information submitted, X was formed as a public limited liability company under the laws of Country. X's sole shareholder, A, acquired all outstanding shares of X on d1 and intended X to be treated as a disregarded entity for federal income tax purposes effective no later than d1. However, A inadvertently failed to timely file a Form 8832, Entity Classification Election.

LAW AND ANALYSIS

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3 and 301.7701-4. 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 as provided in § 301.7701-3.

Section 301.7701-3(b)(2) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is (1) a partnership if it has two or more members and at least one member does not have limited liability, (2) an association if all members have limited liability, or (3) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing a Form 8832 with the service center designated on the Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 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 date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.9100-1(a) provides that the regulations under §§ 301.9100-2 and 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election under this section. Section 301.9100-1(a) further provides that § 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-1(b) provides that a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish 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.

Section 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election or (ii) aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within

the meaning of § 6664-2(c)(3) of the Income Tax Regulations); (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an election under § 301.7701-3 to be treated as disregarded entity for federal tax purposes effective d1. X should make the election by filing a properly executed Form 8832 and attaching a copy of this letter to the election. A copy is enclosed for that purpose.

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.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

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

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

cc: