

Internal Revenue Service

Department of the Treasury
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September 23, 2010

Legend

X =

Y =

D1 =

D2 =

Year =

Country =

Dear _____ :

This responds to a letter dated March 24, 2010, and subsequent correspondence, written on behalf of X, requesting 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

According to the information submitted, X was organized under the laws of Country by Y on D1. X failed to timely file Form 8832, Entity Classification Election, to be treated as a partnership for federal tax purposes effective D1.

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. An eligible entity with at least two members can elect to be classified as either an association or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

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. A foreign eligible entity with two or more members having limited liability may elect to be treated as a partnership pursuant to the rules of § 301.7701-3(c). 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 the form is filed.

Section 301.7701-3(g)(1)(ii) provides that if an eligible entity classified as an association elects to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

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.

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. Sections 301.9100-2 provides automatic extensions of time for making certain elections. Sections 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.

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 extension of time of the earlier of 120 days from the date of this letter or the expiration of the period of limitations for YEAR to make an election to be treated as a partnership for federal tax purposes effective D2. 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. This ruling is contingent on X and the owners of X filing, within the earlier of 120 days from the date of this letter or the expiration of the period of limitations for YEAR, any required amended or original returns consistent with the requested relief (including application of § 301.7701-3(g)(1)) being effective on D2. To the extent appropriate, these returns or amended returns must include Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, such that these forms reflect the consequences of the relief granted in this letter. Copies of this letter should be attached to any such returns or amended returns.

Except as specifically set forth above, we express 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) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: *Faith P. Colson*
Faith P. Colson
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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cc: