

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:02
PLR-117342-11

Date:
August 30, 2011

LEGEND

X =

A =

B =

Country =

State =

Date =

Dear :

This responds to a letter dated January 19, 2011 and subsequent correspondence from X's authorized representative 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 treat X as a disregarded entity for federal tax purposes.

FACTS

The information submitted states that X is a business entity formed under the laws of Country on Date. Since Date, A and B, husband and wife, have wholly owned X as community property under the laws of State.

X represents that pursuant to § 301.7701-3(a), X is a foreign eligible entity that may elect its classification for U.S. federal tax purposes under § 301.7701-3. A and B intended that X elect under § 301.7701-3(c) to be treated as a disregarded entity effective Date; however, X inadvertently failed to file a Form 8832, Entity Classification Election. A and B represent that they consistently treated X as a disregarded entity for federal income tax purposes beginning on Date. For each affected taxable year, A and B filed Form 8858, Information Return of U.S. Persons with Respect to Foreign Disregarded Entities, as if X had filed Form 8832.

LAW & ANALYSIS

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. An eligible entity with a single owner can elect to be classified as an association or 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. Unless a foreign eligible entity elects otherwise, the entity is treated as an association if all members have limited liability. A foreign eligible entity with a single owner having limited liability may elect to be treated as a disregarded entity. A foreign eligible entity with multiple members having limited liability may elect to be treated as a partnership.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the election filing date or more than 12 months after the election filing date.

Rev. Proc. 2002-69, 2002-2 C.B. 831, provides guidance on the classification of a business entity owned by a husband and wife as community property. If the husband and wife treat a qualified entity as a disregarded entity for federal income tax purposes, the Service will respect that treatment. If the husband and wife treat a qualified entity as a partnership for federal income tax purposes and file the appropriate partnership returns, the Service will respect that treatment. A change in reporting position will be treated as a conversion of the entity. A business entity is a qualified entity if (1) it is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States; (2) no person other than one or

both spouses would be considered an owner for federal tax purposes; and, (3) the business entity is not treated as a corporation under § 301.7701-2.

Section 301.9100-1(c) provides that 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 by which the Commissioner will determine whether to grant an extension of time to make an election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 describes the conditions under which the Commissioner will grant requests for relief 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 (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information 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 120 days from the date of this letter to file Form 8832 with the appropriate service center and elect to be treated as a disregarded entity for federal tax purposes, effective Date. A copy of this letter should be attached to Form 8832.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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 X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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