

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201216014**
Release Date: 4/20/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Numbers: 7701.00-00, 9100.00-00,
9100.31-00

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-131405-11
Date:
December 08, 2011

LEGEND

X =

Y =

Country =

Date 1 =

Date 2 =

Year =

Dear :

This letter responds to your letter dated July 22, 2011, and subsequent correspondence, submitted on behalf of X by X's authorized representatives, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be classified as a partnership for federal tax purposes.

FACTS

According to the information submitted, X was formed on Date 1 under the laws of Country as a limited liability partnership. X holds an interest in Y, a domestic limited liability company. On Date 2, X sold its interest in Y.

X represents that, through its agent, it has paid withholding tax with respect to its foreign partners pursuant to § 1446 of the Internal Revenue Code (Code) and the regulations thereunder for effectively connected income (ECI) realized under the principles of Rev. Rul. 91-32, 1991-1 C.B. 107, on the sale of Y on Date 2.

X intended to be treated as a partnership for federal tax purposes effective Date 1. However, X inadvertently failed to timely file a Form 8832, Entity Classification Election.

LAW AND 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 as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

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

Section 301.7701-3(b)(2)(ii) provides that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

Section 301.7701-3(d)(1)(i) provides that for purposes of § 301.7701-3, a foreign eligible entity is relevant when its classification affects the liability of any person for federal tax or information purposes. The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a federal

tax return, information return, or statement for which the classification of the entity must be determined.

Section 301.7701-3(d)(1)(ii)(A) provides that for purposes of § 301.7701-3, except as provided in § 301.7701-3(d)(1)(ii)(B), the classification for Federal tax purposes of a foreign eligible entity that files Form 8832, "Entity Classification Election", shall be deemed to be relevant only on the date the entity classification election is effective.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the 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 the grant of relief will not prejudice the interests of the Government.

Rev. Rul. 91-32 provides that when a nonresident alien individual sells an interest in a partnership, the gain from the disposition of the partnership interest that is attributable to the ECI property of the partnership is subject to tax.

CONCLUSION

Based solely on the facts submitted and 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 elect to be classified as a partnership for federal tax purposes effective Date 1. The election should be made by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the election. A copy of this letter is attached for this purpose.

This ruling is contingent upon the filing within 120 days of this letter any and all required Federal income tax and information returns from Year to the present consistent with the requested relief.

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

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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

The ruling contained in this letter is 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 ruling request, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: