

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-150933-12

Date:
May 14, 2013

LEGEND

X =

D =

Country =

Dear :

This is in response to a letter dated November 2, 2012, and subsequent correspondence, submitted 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 an association taxable as a corporation for federal tax purposes.

FACTS

According to the information submitted, X was formed on D under the laws of Country. X intended to be treated as an association taxable as a corporation for federal tax purposes effective D. However, X inadvertently failed to timely file Form 8832, Entity Classification Election, electing to be treated as an association taxable as a corporation for federal tax purposes.

X represents that it acted reasonably and in good faith, and that the interests of the government will not be prejudiced by granting relief. X further represents that no hindsight is involved in seeking the relief requested.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Pursuant to the rules of § 301.7701-3(c), unless the entity makes an election to be treated otherwise, a foreign eligible entity is treated as (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(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(2) 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 date on which the election is filed and cannot be more than 12 months after the date the election is filed.

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 6 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) provides that the term “regulatory election” includes 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 the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner 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 facts submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of one hundred twenty (120) days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes effective D. 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.

This ruling is contingent on X filing, within 120 days of the date of this letter, all required returns and amended returns for all open years consistent with the requested relief. These returns may include, but are not limited to, Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, such that these returns reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to any such returns.

Except as expressly set forth herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code, including whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: