

Internal Revenue Service

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Person To Contact: _____, ID No. _____

Telephone Number: _____

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PLR-150977-13

Date:
July 28, 2014

LEGEND

X =

Y =

A =

Country =

Date 1 =

Date 2 =

Date 3 =

Year =

Dear _____ :

This letter responds to a letter dated December 13, 2013, and subsequent correspondence, submitted on behalf of X, 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 file an election to be classified as a partnership under § 301.7701-3.

FACTS

X was formed on Date 1 under the laws of Country. On Date 2, several individuals, including A, a U.S. tax resident, acquired 100% of Y, which indirectly owned X. By default classification, X was an association for federal tax purposes. X failed to

file timely Form 8832, Entity Classification Election, to be classified as a partnership for federal tax purposes, effective Date 2.

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. Under § 301.7701-3(a), an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(2)(i)(B) provides that, unless an entity elects otherwise, a foreign eligible entity is an association if all members 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), or to change its classification, 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 301.7701-3(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.

Section 301.9100-1(c) provides that the Commissioner may 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 the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions 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 the taxpayer provides evidence (including affidavits described in

§ 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of 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 not been satisfied for any effective date prior to Date 3. As a result, X is not granted an extension of time to make an election to be treated as a disregarded entity for federal tax purposes for an effective date prior to Date 3.

However, based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied for an effective date of Date 3. 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 Date 3. X must 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 all required Federal income tax and informational returns (including amended returns) consistent with the requested relief granted in this letter. A copy of this letter should be attached to any such return. 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 expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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: _____
James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: