

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-114170-21

Date:
November 04, 2021

Legend

X =

Y =

State =

Country =

Date 1 =

Date 2 =

Date 3 =

A =

Dear :

This responds to a letter dated July 6, 2021, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for a subsidiary, Y, to file an election under § 301.7701-3(c) to be treated as a foreign partnership for U.S. federal tax purposes as of Date 3.

FACTS

The information submitted states that X was formed as a limited liability company under the laws of State on Date 1. On Date 2, X became a partnership for federal tax purposes. On Date 3, X and A formed Y, a foreign limited liability company under the laws of Country. Both A and X were members with limited liability under the law of Country and thus Y was classified by the default rules of section 301.7701-3(b)(2) as an association and treated as a corporation for federal tax purposes. X represents that Y is a foreign entity eligible to elect to be treated as a foreign partnership and was formed as a joint venture. However, X inadvertently failed to timely file a Form 8832, Entity Classification Election, electing to treat Y as a foreign partnership effective Date 3.

X represents that it acted reasonably and in good faith. Further, X represents that the interests of the government will not be prejudiced for all taxable years affected by the election by granting the relief sought.

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 as provided in § 301.7701-3. 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, 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)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity 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, in part, 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, except as provided in § 301.7701-3(c)(1)(iv) and (v), 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, in part, 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 such 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 301.9100-1(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 (Code) except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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.

Section 301.9100-3(a) provides that a request for relief under § 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 (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 information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Y is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to classify as a foreign partnership effective Date 3. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on Y filing, within 120 days from the date of this letter, any required returns (including amended returns) consistent with the requested relief being effective on Date 3 (including the application of § 301.7701-3(g)(1)(iii)). A copy of this letter should be attached to any such returns or amended returns.

We express no opinion concerning the assessment of any interest, additions to tax, additional amounts, or penalties for failure to file a timely income tax or information return with respect to any taxable year that may be affected by this ruling. For example, we express no opinion as to whether a taxpayer is entitled to relief from any penalty on the basis that the taxpayer had reasonable cause for failure to file timely any income tax or information 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.

If applicable, this election is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of Y if the election otherwise would change the amount of any section 965 element of any such United States shareholder. See § 1.965-4(c)(2).

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.

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 X's authorized representatives.

Sincerely,

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

Enclosures (2):

Copy of this letter
Copy for 6110 purposes

cc: