

Internal Revenue Service

Department of the Treasury

Index Number: 7701.00-00
9100.00-00

Washington, DC 20224

Number: **199937023**
Release Date: 9/17/1999

Person to Contact:

Telephone Number:

Refer Reply To:
PLR-122708-98 CC:DOM:P&SI:3
Date:
June 17, 1999

LEGEND

Company =

Company 2 =

Company 3 =

Company 4 =

d1 =

Country =

Dear

This letter responds to a letter by your authorized representative dated December 23, 1998, and subsequent correspondence on behalf of Company, requesting an extension of time to file Form 8832, Entity Classification Election, allowing Company's wholly owned foreign subsidiary, Company 3, to be disregarded for federal income tax purposes under § 301.7701-3(c) of the Procedure and Administration Regulations, effective for the taxable year beginning d1.

FACTS

According to the information submitted, Company, a domestic corporation, is the parent of wholly-owned Company 2, a Country entity; Company 2 is the parent of wholly-owned Company 3, a Country entity; and Company 3 is the parent of wholly-owned Company 4, a domestic corporation. Company and Company 4 desire to file consolidated federal tax returns, but in order to do so, Company 2 and Company 3 must be disregarded for United States federal income tax purposes. Company 2 timely filed Form 8832, Entity Classification Election, electing to be classified as a disregarded

entity for the taxable year beginning d1. However, Company 3 did not timely file Form 8832. Company has therefore requested a ruling under §§ 301.9100-1 and 301.9100-3 that Company 3 be granted an extension of time to file Form 8832 effective for the taxable year beginning d1.

Company has made the following representations. First, Company represents that Company 3 was not insolvent during the taxable year beginning d1. Second, with regard to any dual consolidated losses that Company might have, Company represents that it will comply with the rules under § 1503(d) and Treas. Reg. § 1.1503-2. Third, Company represents that it will file an amended consolidated return consistent with the treatment of Company 2 and Company 3 as disregarded entities. Fourth, Company represents that both Company 2 and Company 3 will comply with the regulations under § 332 and the regulations under § 367(b). Finally, Company represents that no election under § 338 was made in the acquisition of any of the above mentioned subsidiaries.

LAW

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 chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(2)(i)(B) provides that, unless the entity elects otherwise, a foreign eligible entity is classified as 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 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 date on which the election is filed.

Under § 301.9100-1(c), the Commissioner has discretion to 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 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 the Commissioner will use to determine whether to grant an extension of time to make an election. 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 will be granted when the

taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company and Company 3 are granted an extension until 60 days following the date of this letter to file the Form 8832 effective as of d1.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Furthermore, no opinion is expressed concerning the amount of income, if any, reportable by Company under the provisions of § 951(a) and § 956.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Under a power of attorney on file with this office, this letter is being sent to you, the taxpayer, and copies are being sent to your authorized representatives.

Sincerely yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and
Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes