

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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September 30, 1999

Legend

X =

Y =

P1 =

P2 =

A =

D1 =

COUNTRY =

This responds to your letter dated March 15, 1999, and subsequent correspondence, written on behalf of X, requesting a ruling that X be given an extension of time to elect to be treated as a partnership for federal tax purposes for its taxable year beginning D1.

FACTS

X is a limited liability company formed on D1 under the laws of COUNTRY, with P1, a domestic limited partnership, as its 94% owner and P2 as its 6% owner. On that date P1 and P2 transferred to X their interests in Y, a COUNTRY limited liability company that is treated as a partnership for U.S. tax purposes, of which X was its over 99% owner. Because X has limited liability, it defaults into corporate status under § 301.7701-3(b)(2)(i).

X's representative's in COUNTY intended that X be taxed as a partnership for

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U.S. federal tax purposes, and relied on X's U.S. owners to take any action necessary to ensure partnership tax treatment. The U.S. owners, however, failed to file a timely election pursuant to § 301.7701-3(c) of the Procedure and Administration Regulations for X to be taxed as a partnership for federal tax purposes as of D1.

In support of its request for late election relief, X makes the following representations:

1. Since 1997, COUNTRY real estate, and assets relating to the ownership and operation of the COUNTRY real estate, have been the sole assets of Y.
2. Since D1, the interest in Y, and assets relating to the ownership of Y, have been the sole assets of X.
3. Since D1, the interest in X, and assets relating to the ownership of X, have been the sole assets of P1.
4. Before D1, the interest in Y, and assets relating to the ownership of Y, were the sole assets of P1.
5. The COUNTRY real estate is subject to a long-term lease that commenced in 1973 and, as extended, currently expires in 2008.
6. Y has reported net taxable income with respect to its ownership of the COUNTRY real estate in every year since 1993, and Y makes distributions of available cash to its partners with respect to such income at least twice each calendar year.
7. A became an owner of Y immediately prior to the transfers by P1 and P2 of their interests in Y to X, and A remains an owner of Y.
8. P1 will satisfy all reporting requirements under § 6038B with respect to the transfer of its interest in Y to X.

#### LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. Section 301.7701-2(a). An eligible entity with more than a single owner can elect either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or to be taxed as a partnership.

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Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the 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.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election can be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a 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.

Requests for relief under § 301.9100-3 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. Section 301.9100-3(a).

A taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If the specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight. Section 301.9100-3(b)(3)(iii).

### CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time to elect to be treated as partnership for federal tax purposes as of D1. X has until 60 days from the date of this letter to file Form 8832 with the applicable service center to elect to be treated as a partnership for federal tax purposes.

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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.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

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.

Sincerely,

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

Enclosures (2)  
Copy of this letter  
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