

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-118707-01
Date:
August 9, 2001

LEGEND:

W =

X =

Y =

Z =

D1 =

Country =

Dear

This letter responds to a letter dated March 29, 2001, and subsequent correspondence written on behalf of Z, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be classified as a partnership under § 301.7701-3(c).

FACTS

According to the information submitted, X was incorporated on D1 under the laws of Country. X, a domestic limited liability company that is a disregarded entity for federal tax purposes, and Y, a Country corporation, are the sole shareholders of Z. W, a domestic S corporation, is the sole owner of X. It is represented that the members of Z have limited liability within the meaning of § 301.7701-3(b)(2)(ii). W, X, and Y intended to have Z classified as a partnership for federal income tax purposes effective D1. However, due to inadvertence, Form 8832, Entity Classification Election, was not timely filed.

LAW AND ANALYSIS

Section 301.7701-3(a) allows 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) to 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.

Section 301.7701-3(b)(2)(i)(B) provides that, unless the 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 as other than its default classification in § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Section 301.7701-3(c)(1)(iii) provides that the effective date specified on the 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.

Under § 301.9100-1(c), the Commissioner may 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 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 a regulatory 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.

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.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Z is granted an extension of time for making the election to be classified as a partnership effective D1, until 60 days following the date of this letter. The election should be made by following the procedures set forth in Form 8832 and a copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other

provision of the Code.

This ruling is directed only to the taxpayer on whose behalf it was requested. 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, we are sending a copy of this letter to Z's authorized representative.

Sincerely yours,
PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

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