

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-159555-01

Date:

April 12, 2002

P =

A =

Country =

D1 =

D2 =

Dear :

This letter responds to a letter dated October 26, 2001, and subsequent correspondence submitted on behalf of P by its authorized representative, requesting a ruling that P be given an extension of time to elect under § 301.7701-3(c) of the Procedure and Administration Regulations to be classified as a partnership for federal tax purposes.

The information submitted states that P was incorporated on D1 as a Country exempted company with limited liability pursuant to the laws of Country. A, as a Director of P, represents that pursuant to § 301.7701-3(a), P is a foreign eligible entity that is not required to be classified as a corporation for U.S. federal tax purposes. Each member of P has limited liability as defined in § 301.7701-3(b)(2)(ii). P intended to be classified as a partnership for federal tax purposes effective on D2. However, due to inadvertence, P did not timely make the election.

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. 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 Internal Revenue Code. Section 301.7701-2(a).

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 owners 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 will 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).

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 an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 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.

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).

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue) the taxpayer was unaware of the necessity for the

election.

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, P is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a partnership for federal tax purposes effective for the taxable year beginning on D2. A copy of this letter should be attached to the Form 8832. A copy is included for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to P'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