

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:3 – PLR-170426-03

Date:

September 27, 2004

LEGEND

X =

d1 =

d2 =

Country =

Dear :

This letter responds to a letter dated December 15, 2003, and supplemental correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that X be granted an extension of time to make an election to be classified as a partnership.

X was formed on d1 under Country law. Pursuant to Country law, X provides limited liability to all of its shareholders. On d2, X's shareholders adopted new articles of association. At the time the new articles of association were adopted, the shareholder's of X intended for X to elect to be classified as a partnership for federal tax purposes. However, due to an error by X's tax advisor a Form 8832, Entity Classification Election, was never filed.

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under § 301.7701-2, § 301.7701-3 and § 301.7701-4. 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 as provided in § 301.7701.

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Section 301.7701-3(b)(2) provides that, except as provided in § 301.7701-(b)(3), unless the entity elects otherwise, a foreign eligible entity is a partnership if it has two or more members and at least one member does not have limited liability, an association if all members have limited liability, or 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 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 that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing a Form 8832 with the service center designated on Form 8832. Section 301.7701-3(c)(1)(ii) provides that an eligible entity required to file a federal income tax return for the taxable year for which the election is made must attach a copy of its Form 8832 to its federal tax or information return for that year. Section 301.7701-3(c)(1)(ii) further provides that if the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal income tax or information return of any direct or indirect owner of that entity for the taxable year of the owner that includes the date on which the election is effective.

Section 301.7701-3(c)(iii) provides that an election made under § 301.7701-3 shall be effective on the date specified or, if no date is specified, on the date filed. Section 301.7701-3(c)(iii) further provides that 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 has discretion to grant a reasonable extension of time under rules set forth in §§ 301.9100-2 and 301.9100-3, 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 a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth 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

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Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to submit a Form 8832, effective on d2, to the appropriate service center. A copy of this letter should be attached to the election. A copy is included for that purpose.

Except as specifically set forth herein, we express or imply no opinion 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 requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes