

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:PSI:3

PLR-160691-04

Date:

May 23, 2005

LEGEND

X =

Y =

D1 =

D2 =

Country =

Dear :

This letter responds to a letter dated November 15, 2004, as well as subsequent correspondence, submitted by X's authorized representative, requesting rulings under §§ 301.7701-3(c)(1)(iv) and 301.9100-3 of the Procedure and Administration Regulations. Specifically, X is requesting the Service's consent to change Y's classification from a disregarded entity to an association taxable as a corporation, effective D1.

FACTS

According to the information submitted, X became the 99% owner of Y, through a series of subsidiary entities, on D2. X and its subsidiary entities did not own any of Y

prior to D2. Y, a Country eligible entity, had previously elected, within sixty months prior to D1, to be treated as a disregarded entity for federal tax purposes.

### LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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. It further provides that an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2) provides guidance on the default classification of a foreign eligible entity for federal tax purposes. Section 301.7701-3(b)(2)(C) provides that unless it elects otherwise, a foreign eligible entity is disregarded as an entity separate from its owner if it has a single owner that does not have limited liability, or 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 other than as provided in § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.7701-3(c)(1)(iv) provides that if an eligible entity makes an election under § 301.7701-3(c)(1)(i) to change its classification, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 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. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the Government.

### RULINGS

Based on the facts submitted and representations made, we rule as follows.

(1) Because more than 50 percent of the ownership interests of Y as of D1 are owned by persons that owned no interests in Y on the effective date of Y's previous classification change to a disregarded entity, we consent to Y changing its classification for federal tax purposes less than 60 months after this previous change.

(2) Because the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied, we grant Y an extension of time to elect to be treated as an association taxable as a corporation for federal tax purposes, effective D1. Y is to file Form 8832 with the appropriate service center within 60 days from the date of this letter. A copy of this letter should be attached to the election form.

Except for the specific rulings above, no opinion is expressed or implied as to the federal tax consequences of the facts of this case under any other provision of the Code.

Under a power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

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.

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for section 6110 purposes