

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:PSI:B01

PLR-104427-18

Date:

August 06, 2018

LEGEND

X =

D1 =

D2 =

D3 =

D4 =

D5 =

Country =

Dear :

This is in response to a letter dated February 1, 2018, submitted on behalf of X by its authorized representatives. X requests (1) a ruling that X's election to be classified as an association taxable as a corporation was an initial classification election, and not a change in classification, for purposes § 301.7701-3(c)(1)(i) of the Procedure and Administration Regulations and (2) an extension of time under § 301.9100-3 to file an election under § 301.7701-3(c) to be treated as a partnership for federal tax purposes.

FACTS

According to the information submitted, X was formed on D1 under the laws of Country. X intended to be treated as a partnership for federal tax purposes effective D3. However, X inadvertently failed to timely file Form 8832, Entity Classification Election, to be treated as a partnership for federal tax purposes effective D3. Instead, on D4, X filed a Form 8832, Entity Classification Election, requesting to be classified as an association taxable as a corporation effective D2.

Prior to D3, X had no assets, income, deductions, liabilities, bank accounts, business operations, or board meetings, and was dormant.

LAW AND ANALYSIS

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association if all members have limited liability, unless the entity makes an election to be treated otherwise. A foreign eligible entity with two or more members having limited liability may elect to be treated as a partnership pursuant to the rules of § 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to 75 days prior to the date the form is filed or up to 12 months after the date the form is filed.

Section 301.7701-3(c)(1)(i) provides, in part, that except as provided in § 301-7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301-7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

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 (other than an election made by an existing entity to change its classification as of the effective date of this section), 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. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of § 301.7701-3(c)(1)(iv).

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 Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term

"regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for regulatory 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 X's corporate classification election was an initial classification effective D2, and not a change in classification, for purposes of § 301.7701-3(c)(1)(i). As such, a subsequent election by X to change its classification will not be subject to the sixty months limitation set forth in § 301.7701-3(c)(1)(iv).

Further, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to make an election to be treated as a partnership for federal tax purposes effective D3. X should make the election by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the form.

This ruling is contingent on the owners of X filing within 120 days of this letter all required returns for all open years consistent with the requested relief. These returns may include, but are not limited to, the following forms: (i) Forms 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, (ii) Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, and (iii) Forms 8858, Information Return of U.S. Persons With Respect to Disregarded Entities, such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to any such returns.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Joy C. Spies

Joy C. Spies
Senior Technician Review, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes