

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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LEGEND

Taxpayer

Company

State

Foreign Country

Date 1

Date 2

Date 3

Dear

This replies to a letter dated December 23, 1998, in which Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 for an extension of time to file an agreement described in Treas. Reg. § 1.1503-2(g)(2), and an election pursuant to Treas. Reg. § 301.7701-3(c)(1). The agreement under Treas. Reg. § 1.1503-2(g)(2) was required to be filed with Taxpayer's timely filed U.S. income tax return for the taxable year ending December 31, 1997. The election under Treas. Reg. § 301.7701-3(c)(1) was required to be filed by March 29, 1998. Additional information was submitted in a letter dated February 3, 1999. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

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by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a calendar year taxpayer, is a domestic corporation. Taxpayer established a branch (Branch) in Foreign Country on Date 1, which incurred losses in 1997. Taxpayer deducted Branch's 1997 losses on its 1997 tax return. Company is a limited liability business organization formed under the laws of Foreign Country. Company was wholly acquired by Taxpayer on Date 2. Company is an eligible entity under § 301.7701-3. Branch was contributed to Company on Date 3.

Taxpayer did not receive adequate tax advice from its professional advisors. As a result, the agreement described in § 1.1503-2(g)(2) was not filed with the tax return. In addition, Taxpayer and Company failed to elect to disregard Company as an entity separate from Taxpayer. Consequently, Form 8832 for this election was not timely filed.

Treas. Reg. § 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. Elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification.

Treas. Reg. § 301.7701-3(b)(2)(i)(B) provides that, unless the entity elects otherwise, a foreign eligible entity is classified as an association if all members have limited liability.

Treas. Reg. § 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

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Treas. Reg. § 301-9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the 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.

In the present situation, Taxpayer satisfies § 301.9100-3. As a result, Company is granted an extension of time for making the election to be treated as an entity that is disregarded as an entity separate from its owner for federal tax purposes until 30 days following the date of this letter. The election should be made by filing Form 8832, effective Date 2. Taxpayer is also granted an extension of time until 30 days from the date of this ruling letter to file the agreement described in Treas. Reg. § 1.1503-2(g)(2) for the tax year ending December 31, 1997.

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

A copy of this ruling letter should be associated with the election and agreement.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Associate Chief Counsel (International)