

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:1

PLR-123021-09

Date:

October 14, 2009

LEGEND

X =

Parent =

Y =

Z =

Date 1 =

Date 2 =

Country =

Dear :

This responds to a letter dated April 29, 2009 submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a disregarded entity for federal tax purposes.

Facts

According to the information submitted, Parent is the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Parent

indirectly owned all of the stock of Y. Y formed X on Date 1 under the laws of Country. On Date 2, Z acquired an ownership interest in X in exchange for a contribution of cash.

Parent and X intended for X to be treated as a disregarded entity for federal tax purposes as of Date 1, and as a partnership on and after Date 2. However, X inadvertently failed to timely file Form 8832, Entity Classification Election, to be treated as a disregarded entity as of Date 1 for federal tax purposes.

Law and Analysis

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. 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 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 a single owner having limited liability may elect to be treated as a disregarded entity 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.

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 the requirements of § 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 make an election to be treated as a disregarded entity for federal tax purposes effective Date 1. X must 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.

As a condition for this late election relief, Parent, X, and all other entities affected by X's disregarded entity classification election must amend their federal income tax returns and/or informational returns consistent with X having made a timely entity classification election to be treated as a disregarded entity effective Date 1.

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 representative.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: