

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-108694-00

Date:

August 9, 2000

Legend:

A =

B =

C =

D =

D1 =

D2 =

aa% =

bb% =

Country1 =

Country2 =

This responds to your letter dated February 7, 2000, and subsequent correspondence, submitted on behalf of D requesting an extension of time pursuant to § 301.9100-3(a) of the Procedure and Administration Regulations to file an election for D to be classified as a partnership for federal tax purposes under § 301.7701-3(c).

FACTS

A is a domestic corporation which wholly owns B, a domestic corporation. C is an unrelated corporation formed under the laws of Country1. On or around D1, B and C entered into a joint venture agreement whereby they would each hold interests in a newly formed entity, D, which would be a limited liability company established under the laws of Country2. The purpose of the joint venture was to engage in business in Country2 through D. Pursuant to the joint venture agreement, on D2, D was formed with B owning a aa%

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interest and C owning a bb% interest in D.

Taxpayer represents that A, B, C, and D intended for D to make an election to be treated as a partnership for federal tax purposes, effective on D2. Taxpayer relied on its accountants who, due to mis-communication, failed to make the election to treat D as a partnership.

D represents that it is a foreign eligible entity within the meaning of § 301.7701-3(b).

LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of foreign eligible entities for federal tax purposes. In the absence of an election to be treated as a partnership, a foreign eligible entity with more than one owner is treated as an association taxable as a corporation if all of the members of the entity have limited liability.

Under § 301.7701-3(c)(1), a foreign eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(2) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(b) can be effective on the date specified on the Form 8832 or on the date filed. The effective date specified on the Form 8832 cannot be more than 75 days prior to 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 the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a 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 standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making 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. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that

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the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, D is granted an extension of time to make the election to have it treated as a partnership for federal tax purposes, effective D2, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832 and a copy of this letter should be attached to the election.

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) of the 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 the taxpayer.

Sincerely,
/s/ Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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