

Internal Revenue Service

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X =

P =

Member =

A =

B =

Country =

d1 =

d2 =

d3 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated October 15, 2008, and subsequent correspondence, submitted on behalf of X, by its authorized representative, requesting a ruling under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration

Regulations that X be granted an extension of time to file an election to be classified as a disregarded entity under § 301.7701-3 effective d2.

FACTS

The information submitted states that X was formed by Member on d1 as a P under the laws of Country. Under the laws of Country, the owners of a P have limited liability. Member intended that X be treated as a disregarded entity for federal tax purposes, however, due to inadvertence, X failed to file a timely Form 8832, Entity Classification Election.

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 as provided in § 301.7701-3.

Section 301.7701-3(b)(2)(i) provides that, unless it elects otherwise, a foreign eligible entity is (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not 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), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

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

Section 301.7701-3(d)(1)(i) provides that, for purposes of § 301.7701-3, a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes. The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a federal tax return, information return, or statement for which the classification of the entity must be determined. Thus, the classification of a foreign entity is relevant, for example, on the date that an interest in the entity is acquired which will require a U.S. person to file an information return on Form 5471.

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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 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 file Form 8832 with the appropriate service center and to elect to be classified as a disregarded entity for federal tax purposes effective d2. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose.

This ruling is contingent on Member timely filing amended returns including Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, with respect to X, if not already filed, for the taxable years Year 1 through Year 2, if relevant. If Member fails to file Form 8858 as described above, unless Member has already filed Form 8858 with respect to X with respect to the taxable years described above, this ruling is null and void.

This ruling is also contingent on Member timely filing an amended return for its taxable year which includes d3 reflecting the income or loss Member recognized as a result of the election described above, and A and B timely filing amended returns for their taxable years which include their distributive shares of the income or loss of Member described above, and any other applicable items, for its taxable year which includes d3. This ruling is also contingent on X filing any necessary returns for the short taxable year ended d3. If A, B, Member or X fail timely to file the returns described above, this ruling is null and void.

Except as expressly set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts discussed above under any other provision of the Code.

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

Sincerely,

Curtis G. Wilson

Curtis G. Wilson
Associate Chief Counsel
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: