

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
Dec 14, 1999

Legend:

A =

B =

C =

D =

E =

F =

G =

Date1 =

Date2 =

Date3 =

State1 =

State2 =

This responds to a letter dated September 30, 1999, submitted on behalf of G, requesting an extension of time pursuant to §301.9100-3(a) of the Procedure and Administration Regulations to file an election to be treated as a corporation for federal tax purposes under § 301.7701-3(c).

FACTS

PLR-116060-99

A is a partnership formed under the laws of State1, is classified as a corporation for federal tax purposes, and is the common parent of an affiliated group of corporations. A owns all of the stock of B, a corporation formed under the laws of State1. B owns all of the stock of C, a corporation formed under the laws of State2, and owns all of the stock of E, a corporation formed under the laws of State1. C owns all of the stock of D, a corporation formed under the laws of State2. Prior to Date1, D owned all the stock of F, a corporation formed under the laws of State1. A, B, and E are holding companies and do not engage in an active trade or business. F is engaged in two different businesses and decided to separate these businesses. To this end, the following transactions were undertaken.

On Date2, F created G, a limited liability company formed under the laws of State2, by transferring various contracts to G in exchange for the sole membership interest in G. On Date1, F distributed its interest in G to D, who, in turn, distributed the stock of F to C. C then distributed the stock of F it received from D to B. B then contributed the stock in F to E. After the transactions on Date1, F is owned by E instead of D, and G is owned by D instead of F.

The affiliated group of corporations including A, B, C, D, E and F intended to have G be treated as a corporation for federal tax purposes. However, due to the relocation of the principal officer in charge of tax affairs for the group, the responsibility for making the election was delegated to a subordinate who failed to make the election.

LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of domestic eligible entities for federal tax purposes. Generally, a domestic eligible entity with a single member is disregarded as an entity separate from its owner unless the entity elects to be treated otherwise. § 301.7701-3(b)(1)(ii).

Under § 301.7701-3(c)(1), a domestic eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(1) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(c) can be effective on the date specified on the Form 8832 or on the date filed if no date is specified on the form. 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 an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Service Bulletin.

PLR-116060-99

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. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. § 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. § 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, G is granted an extension of time for making the election to be treated as a corporation for federal tax purposes, effective on Date3, 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. Specifically, no opinion is rendered on the applicability of § 355 of the Code.

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,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter