

# Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1-PLR-146924-02

Date:

February 4, 2003

## Legend

X =

A =

Sub 1 =

Sub 2 =

Taxpayer =

Partnership =

Country A =

Country B =

Country C =

Country D =

State A =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

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Dear \_\_\_\_\_ :

This letter responds to a letter dated September 18, 2002, and subsequent correspondence, written on behalf of Taxpayer requesting a ruling, under section 301.9100-3 of the Procedure and Administration Regulations, that Taxpayer be granted an extension of time to elect to be treated as an association taxable as a corporation for federal tax purposes under section 301.7701-3(c).

### FACTS

According to the information submitted, on Date 2, X, a corporation formed under the laws of Country A, through a number of its subsidiaries, acquired A, a corporation formed under the laws of Country B. A owns operating businesses in the Country C and Country D. Specifically, A owns Sub 1, a State A holding company and Sub 2, a holding company in Country C. Taxpayer, is a State A limited liability company wholly owned by Sub 1 and, without an election otherwise, is treated disregarded as separate from Sub 1. Partnership was formed under the laws of Country C and its partners are Taxpayer and Sub 1. Partnership is treated as a pass-through entity for Country C tax purposes and as an association taxable as a corporation for U.S. tax purposes. All of these entities were in existence prior to the Date 2 acquisition.

On or before Date 1, Partnership made two loans to Sub 2. Sub 2 makes payments on these loans twice annually. Because Partnership is treated as a pass-through entity for Country 3 purposes, the interest flows through to Sub 1 and Taxpayer. The portion of the interest payments viewed as made to Sub 1 (a corporation) is eligible for a reduced 10% withholding tax rate under the Country C/Country D tax treaty. However, the portion of the payments viewed as made to Taxpayer (a disregarded entity) is not eligible for the reduced withholding tax rate.

X relied on its tax professional to analyze the tax ramifications of the Date 2 acquisition and to advise it of all necessary elections. An election to treat Taxpayer as an association taxable as a corporation was required to be filed by Date 3. Prior to the due date of entity classification election, X's was not advised, nor did it know, that it should make an election to treat Taxpayer as an association taxable as a corporation. It was not until after the election due date that X was advised that it should have made the election with respect to Taxpayer. Upon learning that the election should have been filed, Taxpayer filed the instant ruling request seeking relief to make a late entity election.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 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 this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the service center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 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 such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under section 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 Code except subtitles E, G, H and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 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.

## CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that Taxpayer has satisfied the requirements of section 301.9100-3. As a result, Taxpayer is granted an extension of time of sixty (60) days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 2.

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A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

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

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to the first and second listed authorized representative.

Sincerely,

**/s/ Heather C. Maloy**

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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