

Internal Revenue Service

Department of the Treasury

Number: **200333026**
Release Date: 8/15/2003
Index Number: 7701.00-00, 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-169429-02
Date:
May 15, 2003

X =

Y =

Z =

d1 =

d2 =

Dear :

This responds to a letter dated December 20, 2002, and subsequent correspondence, submitted on behalf of Z, requesting that the Service grant an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an entity classification election. The entity classification election will be effective within sixty months of a previous entity classification election for Z.

Facts

The information submitted states that X is a United States corporation which acquired 100% of the interests in Y on d1. A § 338(h)(10) election was filed with respect to the acquisition of Y stock. Z was a foreign eligible entity owned by Y. d2 (the day following d1) is within sixty months succeeding the effective date of a change in entity classification filed by Z. X desired to file an entity classification election for Z; however, it could not file the election effective d2 without the permission of the Commissioner. Accordingly, X prepared a request for this private letter ruling.

Law and Analysis

Section 301.7701-3(a) provides, in part, 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) provides, in general, that except as provided in § 301.7701-3(b)(3), unless the entity 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 member that does not have limited liability.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election under § 301.7701-3(c)(1)(i) (to elect or change entity classification) 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. If a purchasing corporation makes an election under § 338 regarding an acquired subsidiary, an entity classification election for the acquired subsidiary can be effective no earlier than the day after the acquisition date (within the meaning of § 338(h)(2)).

Section 301.7701-3(c)(1)(iv) provides that if an eligible entity makes an election to change its classification, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph.

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 Code, except E, G, H, and I. 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). 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, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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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 301.9100-1(a)

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.

Conclusion

Based on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied, and that permission to make an entity classification election under § 301.7701-3(c)(1)(iv) should be granted. As a result, Z is granted an extension of time for 60 days from the date of this letter to file an entity classification election effective on d2. A copy of this letter should be attached to the Form 8832. A copy is included for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the proposed transaction. In particular, no opinion is expressed or implied concerning the validity of any entity classification election by Z.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Z's authorized representative.

Sincerely yours,

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes