

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:

CC:PSI:B03 – PLR-143629-03

PLR-143632-03

Date:

August 11, 2004

Legend

Parent =

Subsidiary =

Arrangement =

Foreign Country =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated July 14, 2003, and subsequent correspondence, requesting extensions of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file elections for Subsidiary and Arrangement to be treated as disregarded entities for federal tax purposes.

Facts

According to the information submitted, Subsidiary is wholly-owned by Parent. Subsidiary was formed in Foreign Country on Date 1 and provides Parent with limited liability pursuant to the laws of Foreign Country. Parent intended Subsidiary to be

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treated as a disregarded entity for federal tax purposes effective Date 1, but Subsidiary did not file a timely Form 8832, Entity Classification Election.

According to the information submitted, Subsidiary created Arrangement in Foreign Country on Date 2. It is represented that Parent has consistently treated Arrangement as wholly-owned for federal tax purposes and that, under the laws of Foreign Country, Parent has limited liability with respect to its interest in Arrangement. Parent intended for Arrangement to be treated as a disregarded entity for federal tax purposes effective Date 2, but Arrangement did not file a timely Form 8832.

Law and Application

Section 301.7701-2(a) generally provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-2(a) further provides that a business entity with only one owner is classified as a corporation or is disregarded. If it is disregarded, then the entity's activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

Section 301.7701-3(a) provides that so long as a business entity is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), it may elect its classification for federal tax purposes. Section 301.7701-3(b)(2)(i) provides that, 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 owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law pursuant to which the entity is organized, except that if the underlying statute or law allows the entity to specify in its organizational documents whether the members will have limited liability, the organizational documents may also be relevant.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing a Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election 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 date specified on Form 8832 cannot 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.

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Section 301.9100-1(a) provides that an extension of time is available for elections that a taxpayer is otherwise eligible to make.

Under § 301.9100-1(c), the Commissioner has discretion to 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.

Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Conclusion

Based solely on the facts and representations submitted, we conclude that, although the standards for relief under § 301.9100-3 have been satisfied, there is insufficient information to establish that either Subsidiary or Arrangement or both Subsidiary and Arrangement are foreign eligible entities and accordingly otherwise eligible to make entity classification elections under § 301.7701-3.

Accordingly, neither Subsidiary nor Arrangement has satisfied its burden for relief as provided under § 301.9100-1(a). As a result, Subsidiary and Arrangement are denied extensions of time to make entity classification elections under § 301.7701-3.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Internal Revenue Code. Specifically, we express or imply no opinion concerning whether either Subsidiary or Arrangement or both Subsidiary and Arrangement are foreign eligible entities qualified to make the elections.

However, in the event that the Internal Revenue Service determines that either Subsidiary or Arrangement or both Subsidiary and Arrangement are foreign eligible entities for federal tax purposes, neither Subsidiary nor Arrangement nor both Subsidiary and Arrangement are precluded from submitting another request for relief under §§ 301.9100-1 through 301.9100-3 assuming Parent consistently treats Subsidiary and Arrangement as disregarded for federal tax purposes.

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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.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to the taxpayer's representatives.

Sincerely,

/s/

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

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: