

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-106124-04

Date:

December 09, 2004

X =

A =

State =

d1 =

d2 =

Dear :

This responds to a letter dated January 13, 2004, on behalf of X, requesting a ruling under § 1362 of the Internal Revenue Code.

Facts

X was incorporated under State law on d1. A, the sole shareholder of X, filed the appropriate consent and X elected to be taxed as an S corporation effective d2.

A plans to form two State limited liability companies ("LLCs"), in which A will be the sole member. The two LLCs will form a State limited partnership ("LP"), in which the two LLCs are the only members. A, the sole shareholder of X and sole member of the LLCs, plans to contribute all of his shares of X's stock to the LLCs. The LLCs will then contribute the stock to the LP.

A represents that the two LLCs will not elect to be taxed as an association pursuant to § 301.7701-3 of the Procedure and Administration Regulations.

X requests a ruling that the LP is a disregarded entity for federal income tax purposes according to § 301.7701-3(b)(1)(ii). X further requests a ruling that the stock transfers described above will be ignored, that A will continue to be considered the sole shareholder of X, and that the stock transfers will not terminate X's S election.

Law and Analysis

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect. Section 1362(a) provides, in part, that a small business corporation may elect to be an S corporation.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1362(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 301.7701-3(b)(1) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members or (ii) disregarded as an entity separate from its owner if it has a single owner. If the two LLCs do not elect to be taxed as associations, they will be disregarded entities, and A will be treated as owning the LLCs' assets directly.

Rev. Rul. 2004-77, 2004-31 I.R.B. 119, concludes that, if a domestic eligible entity has two owners under local law, but one of the owners is, for federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as a partnership and is disregarded as an entity separate from its owner. Because A is treated as owning all of the interests in LP directly, LP is not a partnership for federal tax purposes.

Conclusion

Based on the facts submitted and the representations made, we conclude:

- (1) LP has a single owner for federal tax purposes, and, assuming LP does not elect to be taxed as an association pursuant to § 301.7701-3, LP is an entity that is disregarded as separate from its owner, A; and
- (2) because A remains the sole owner of X for federal tax purposes, the transfers of X stock to the disregarded LLCs and to the disregarded LP are disregarded for federal tax purposes and do not terminate X's S election.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transactions described above under any

other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation.

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 your authorized representative.

Sincerely,

/s/

Jeanne M. Sullivan
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: