

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1-102744-99
Date:
June 4, 1999

Legend:

Fund1 =

Fund2 =

Fund3 =

Fund4 =

Fund5 =

Y =

PRS1 =

GP =

Z =

a =

b =

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c =

d =

e =

D1 =

State =

Country1 =

Country2 =

Country3 =

This responds to your letter dated May 13, 1999, and prior correspondence, submitted on behalf of Y 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 partnership for federal tax purposes under § 301.7701-3(c).

FACTS

Y is an entity formed under the laws of Country1 on D1. Fund4 is a limited partnership formed under the laws of State and holds an a % membership interest in Y. Fund5 is a limited partnership formed under the laws of Country2 and holds an b % interest in Y. Y represents that Fund4 and Fund5 have limited liability as to the debts or claims against Y.

PRS1 is a limited partnership organized under the laws of Country1. GP is a limited partnership formed under the laws of Country1 and owns an c % general partnership interest in PRS1. Y owns a d % limited partnership interest in PRS1. Z is a publicly traded corporation formed under the laws of Country3. PRS1 owns an e % interest in Z. In addition to Fund4 and Fund5, there are three other entities (Fund1, Fund2, and Fund3)(the "Funds") that hold interests, through limited partnerships, in Z.

Fund4 and Fund5 and Y intended for Y to make an election to be treated as a partnership under § 301.7701-3(c). However, due to mistakes made by Y's outside tax counsel, the election was not timely made.

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Y represents that there is no current intention to sell its interest in PRS1 and PRS1 has no current intention to sell its interest in Z. Further, Z has no current intention to liquidate. Y also represents that if the U.S. investors of GP and the Funds were treated as one U.S. shareholder, the aggregate ownership of Z by all U.S. shareholders (within the meaning of § 951(b)) would not be greater than 50 percent of the total combined voting power of all classes of stock of Z or the total value of Z stock.

LAW AND ANALYSIS

Section 301.7701-3(a) provides 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. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. Section 301.7701-3(b)(2) provides that, unless the entity elects otherwise, a foreign eligible entity is an association if all members have limited liability.

Under § 301.7701-3(c)(1)(i), a foreign eligible entity with at least two members who have limited liability can elect to be classified as a partnership by filing a Form 8832. To be valid, an election must generally be signed by the members of the electing entity, or any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury. See § 301.7701-3(c)(2)(i). The effective date specified on Form 8832 can not be more than 75 days prior nor more than 12 months after the date on which the election is filed. Section 301.7701-3(c)(1)(iii).

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.

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. 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.

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

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granting relief will not prejudice the interests of the Government. Section 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, Y is granted an extension of time for making the election to be treated as a partnership for federal tax purposes, effective D1, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832. 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.

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 and the taxpayer's second listed authorized representative.

Sincerely,

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

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