

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:P&SI:3-PLR-100249-00
Date:
September 21, 2000

Legend

Company =

Date 1 =

Date 2 =

Country =

Dear

This letter responds to your submission dated December 23, 1999, and subsequent correspondence, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that Company be permitted to file a Form 8832 to change its classification pursuant to § 301.7701-3(c) effective for Date 2.

FACTS

The following facts have been represented. Company was formed on Date 1 as a limited liability company under the laws of Country. Company is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), and so may elect its classification for federal tax purposes. Each member of Company has limited liability as defined under § 301.7701-3(b)(2)(ii), and so Company was initially classified as a corporation under the default rules of § 301.7701-3(b)(2)(i)(B). Company has represented that it intended to elect to change its classification to partnership status as of Date 2. However, the election was never made.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

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Section 301.7701-3(b)(2)(i)(B) provides that, unless the entity elects otherwise, a foreign eligible entity is classified as an association if all members have limited liability.

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 Form 8832, Entity Classification Election, 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. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

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) of 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 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.

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 that granting relief will not prejudice the interests of the government.

CONCLUSION

In the present situation, good cause has been shown and the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company has 60 days from the date of this ruling to file a Form 8832, Entity Classification Election, to change its classification as of Date 2. A copy of this letter should be attached with the election and is included for that purpose. Pursuant to § 301.7701-3(c)(2)(i) and (ii), the election must be signed by any prior members who would be affected by this retroactive relief.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed regarding the tax consequences to Company, or any of its members, under § 367, or any other provision of the Code, on Company's formation or as a result of its election under § 301.7701-3(c) to change its classification from a corporation to a partnership.

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. The rulings contained in this letter are based upon information and representations submitted by the taxpayer

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and accompanied by a penalty of perjury statement executed by an appropriate party. In particular, this ruling is based on the representation that all current and prior owners will treat Company as a partnership for all federal tax purposes, including the reporting requirements of § 1.6038B-2 regarding prior contributions to Company. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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