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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-PLR-107348-99
Date: JAN 13 2000

Legend

PARENT =

X =

Y =

LLC1 =

LLC2 =

Z =

D1 =

D2 =

D3 =

D4 =

Country1 =

Country2 =

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This responds to your letter dated April 1, 1999, requesting a ruling that Y and Z be given extensions of time to elect to be treated as disregarded entities for federal tax purposes; Y for its taxable year beginning D1, and Z for its taxable year beginning D2.

FACTS

PARENT is a domestic corporation. X is a wholly owned domestic subsidiary of PARENT. Y is a wholly owned foreign subsidiary of X, formed on D1, under the laws of Country1. Y intended to elect to be disregarded for federal tax purposes as of D1. Y, however, failed to make a timely election to have Y disregarded for federal tax purposes.

X formed LLC1 and LLC2 on D3. LLC1 and LLC2 are both domestic eligible entities which are disregarded as entities separate from their owner pursuant to the default classification rules of § 301.7701-3(b)(1) of the Administration and Procedure Regulations. On D2, X formed Z under the laws of Country2. X had 50 percent of the Z shares issued to LLC1 and the other 50 percent of Z shares issued to LLC2. Z intended to elect to be disregarded for federal tax purposes as of D2. Z, however, failed to make a timely election to have Z disregarded for federal tax purposes.

Y and Z failed to make timely classification elections because they were unaware of the requirement for foreign eligible entities to file Form 8832 to elect a classification other than the default classification. Y and Z did not learn about the requirement to file Form 8832 until their tax advisor audited their records for their taxable year ending D4.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. 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 Code. Section 301.7701-2(a). An eligible entity with a single owner can elect either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the 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

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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.

To elect to be classified other than as provided in § 301.7701-3(b)(2)(i), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election can be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(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 § 301.9100-3 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 Bulletin.

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).

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Y and Z are granted extensions of time to elect to be treated as disregarded entities for federal tax purposes; Y as of D1, and Z as of D2. Y and Z have until 60 days from the date of this letter to file Form 8832 with the applicable service center to elect to be treated as disregarded entities for federal tax purposes.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on

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examination.

This ruling is directed only to the taxpayer who requested 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, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Paul F. Kugler

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

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