

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-150936-02  
Date:  
February 21, 2003

Legend

Company =

Country =

a =

b =

c =

d =

Dear :

This letter responds to a letter dated September 4, 2002, and subsequent correspondence, requesting on behalf of Company an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Company to elect to be treated as an association taxable as a corporation under § 301.7701-3(c).

FACTS

The information submitted discloses that Company was formed in a under the laws of Country. Company acquired U.S. members through private investments in b, and through public offerings in c and the following year. Although it was not specifically stated, Company's offering memoranda clearly assumed that Company was classified as a corporation for U.S. federal income tax purposes. Company, however, was not aware of the requirement to file Form 8832, Entity Classification Election, to be classified as a corporation and was not advised to file an election by its U.S. tax advisor. Therefore, due to inadvertence, Company failed to timely file Form 8832. Because Company has at least one shareholder that is liable for debts of Company, as required under the laws of Country, Company's default classification is as a partnership.

Company represents that it has never taken the position that it should be treated as a partnership for U.S. federal income tax purposes. In addition, Company represents that it has never treated itself as anything other than a corporation for U.S. federal income tax purposes. Company also represents that to the best of its knowledge, none of its shareholders have treated it as a non-corporate entity for U.S. federal income tax purposes and that it has no reason to believe that any shareholders have treated Company as a non-corporate entity. Finally, Company represents that it has not used hindsight in making its request for relief under § 301.9100-3.

### LAW & 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 as provided in § 301.7701-3. An eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

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 in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may 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 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

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 a regulatory 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 granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

### CONCLUSION

Based on the facts submitted and representations made, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Consequently, Company is granted an extension of time of 60 days from the date of this letter to make an election under § 301.7701-3 to be treated as an association taxable as a corporation effective d. Company must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether Company otherwise is eligible to make the election.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Company and a second authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,  
*/s/*

HEATHER C. MALOY  
Associate Chief Counsel  
(Passthroughs and Special  
Industries)

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