

Internal Revenue Service

Department of the Treasury

Index Number: 9100.00-00

Washington, DC 20224

Number: **200027010**
Release Date: 7/7/2000

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1-PLR-122306-98

Date:

March 31, 2000

Legend:

A =

B =

C =

D =

Date1 =

State =

Country =

This responds to a letter dated December 3, 1998, and subsequent correspondence submitted on behalf of D requesting an extension of time pursuant to §301.9100-3(a) of the Procedure and Administration Regulations to file an election to be disregarded as an entity separate from its owner for federal tax purposes under § 301.7701-3(c).

FACTS

A is a corporation formed under the laws of State. A owns all of the stock of B, which is also a U.S. corporation, and B owns all of the stock of C, a corporation formed under the laws of Country. C owns all of the stock of D, also formed under the laws of Country.

On Date1, C sold its entire interest in D to an unrelated third party.

Prior to the sale on Date1, D was treated as a corporation for federal tax purposes. A timely election for D to be disregarded as an entity separate from its owner effective

CC:DOM:P&SI:1-PLR-122306-98

immediately prior to the sale on Date1 was not made. C's in-house personnel, which had been entrusted to appropriately analyze the transaction, failed to consider or make an election under § 301.7701-3(c).

LAW AND ANALYSIS

Section 301.7701-3(b)(3) generally provides that unless an entity elects otherwise, an eligible entity in existence prior to January 1, 1997, will have the same classification that the entity claimed under §§ 301.7701-1 through 301.7701-3 as in effect on the date prior to January 1, 1997. A foreign eligible entity is treated as being in existence prior to January 1, 1997, only if the entity's classification was relevant at any time during the sixty months prior to January 1, 1997. § 301.7701-3(b)(3)(ii). A foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes. § 301.7701-3(d)(1).

Under § 301.7701-3(c)(1)(i), a foreign eligible entity with a single owner can elect to be classified as a disregarded entity by filing a Form 8832. To be valid, an election must generally be signed by each member 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. § 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. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. § 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. § 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, D is granted an extension of time for making the election to be disregarded as an entity separate from its owner for federal tax purposes, effective immediately prior to the sale on Date1, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832, and 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. Specifically, no inference should be drawn from this letter that any gain from the sale of D's assets immediately following its election to be disregarded as an entity separate from its owner gives rise to gain that is not foreign personal holding company income as defined in § 954(c)(1)(B) of the Internal Revenue Code.

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

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