

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02 - PLR-146364-01

Date:

December 14, 2001

P =

Jurisdiction =

D1 =

A =

**Dear**

This is in reply to your letter dated August 28, 2001, and subsequent correspondence submitted on behalf of P, requesting a ruling that P be given an extension of time to elect under § 301.7701-3(c) of the Procedure and Administration Regulations to be classified as a partnership for federal tax purposes.

The information submitted states that P is a civil law partnership formed on D1 in Jurisdiction. A, P's managing partner, represents that pursuant to § 301.7701-3(a), P is a foreign eligible entity that is not required to be classified as a corporation for U.S. federal tax purposes. Each member of P has limited liability as defined in § 301.7701-3(b)(2)(ii). P intended to be classified as a partnership for federal tax purposes effective on D1. P has filed Form 1065, U.S. Partnership Return of Income, for all taxable years including the taxable year beginning on D1. However, P's tax advisors failed to advise P of the requirement that P elect to be a partnership for federal tax purposes by filing Form 8832, Entity Classification Election, effective as of D1. Consequently, P did not file an election to be classified as a partnership for federal tax purposes.

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. 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 Internal Revenue Code. Section 301.7701-2(a).

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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 owners 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.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election will 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).

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, P is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a partnership for federal tax purposes effective for the taxable year beginning on D1. A copy of this letter should be attached to the Form 8832. A copy is included for that purpose.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

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

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Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to P.

Sincerely yours,  
PAUL F. KUGLER  
Associate Chief Counsel  
(Passthroughs and Special  
Industries)

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes