Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
Jan. 8, 2008

LEGEND

X =

A =

Country1 =

Country2 =

Property1 =

Property2 =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear :

This letter responds to a letter dated September 8, 2006, and subsequent correspondence, submitted on behalf of X, requesting a ruling under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to file an election to be classified as a disregarded entity under § 301.7701-3.

FACTS

According to the information submitted, X was formed on d1 as a corporation under the laws of Country1. X is wholly owned by A, a citizen of Country2. A was a resident of Country3 on d1 and remained a resident of Country3 until d4, when A became a resident of the United States. Since d1, X has been treated as an association taxable as a corporation for federal tax purposes.

In d3, X purchased Property1 and Property2 in the United States. Neither A nor X consulted a qualified tax professional for advice on the federal tax implications of purchasing Property1 or Property2. After purchasing Property1, and through d5, A consulted with several legal and financial advisors regarding X with respect to state and international tax issues; however, the advice sought did not concern the federal tax treatment of X. A was not advised to make an election for X to be treated as a disregarded entity until d5. At that time, A was advised that the election should have been made effective d2. After d2, several facts changed with respect to both X and A that made a change in X's entity status more advantageous to A. Because of the delay in receiving the advice, however, a Form 8832, Entity Classification Election, electing to be treated as a disregarded entity was not timely filed.

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 as provided in § 301.7701-3. Under § 301.7701-3(a), an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and 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)(B) provides that, unless an entity elects otherwise, a foreign eligible entity is 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 in § 301.7701-3(b), or to change its classification, by filing a Form 8832 with the service center designated on the Form 8832.

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 can not be more than 12 months after the date on which the election is filed.

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, 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 a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that except as provided in § 301.9100-3(b)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(b)(1)(v) provides that except as provided in § 301.9100-3(b)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

CONCLUSION

Based on the facts submitted and the representations made, we do not believe either A or X acted reasonably and in good faith, as required under § 301.9100-3. Specifically, we believe that neither A nor X exercised reasonable diligence, because both A and X failed to seek advice regarding the federal tax treatment of X with respect to the complex issues involved with the purchase of Property1 and Property2, despite having sought advice on other tax issues affecting X. Moreover, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied, because specific facts have changed since d2 that make an election to treat X as a disregarded entity advantageous to A, and strong proof has not been presented that hindsight was not used in the decision to seek relief. As a result, X is denied an extension of time to file Form 8832 to elect to be classified as a disregarded entity for federal tax purposes.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed or implied as to whether X is otherwise eligible to make the election.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

/s/

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

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