

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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CC:DOM:P&SI:1 PLR-114549-98
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December 1, 1998

Legend

X =

Country =

D1 =

D2 =

D3 =

This responds to your letter dated July 13, 1998, written on behalf of X, requesting a ruling that X be given an extension of time to elect to be treated as a partnership for federal tax purposes for its taxable year beginning D2.

FACTS

X is a closed-end investment trust formed on D1 under Country law. No owner of an interest in X has unlimited liability as defined under § 301.7701-3(b)(2)(ii) of the Procedure and Administration Regulations. X intended to elect partnership tax treatment for federal tax purposes effective on D2. The election, however, which was filed on D3, was not timely.

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")

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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 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.

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 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 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 § 301.9000-3 have been satisfied. As a result, X is granted an extension of time to elect to be treated as a partnership for federal tax purposes. Furthermore, the election filed on D3, effective D2, is deemed timely filed.

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Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

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.

Sincerely,

Signed/Paul F. Kugler
PAUL F. KUGLER
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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