1. Rev. Proc. 2010-32, 2010-36 IRB 320, 09/02/2010, IRC Sec(s).

2. Headnote:

This procedure provides that if a foreign entity makes a check the box election to be a partnership (under the reasonable assumption that it has more than one owner) but then determines it only had one owner, the original check the box election will be treated as an election to be a disregarded entity provided the requirements in the revenue procedure are satisfied. Similarly, it also provides that if a foreign entity makes a check the box election to be disregarded entity (under the reasonable assumption that it has only one owner) but then determines it only had more than one owner, the original check the box election will be treated as an election to be a partnership provided the requirements in the revenue procedure are satisfied.

Reference(s):

3. Full Text:

4. 1. Purpose

The Treasury Department and the Internal Revenue Service (IRS) have become aware that taxpayers are concerned about the validity of elections made by certain foreign eligible entities

under § 301.7701-3(c) of the Procedure and Administration Regulations to be classified for federal tax purposes as a partnership or disregarded as an entity separate from its owner (a disregarded entity). The Treasury Department and IRS understand that these concerns arise due to uncertainty regarding the number of owners for federal tax purposes of the foreign eligible entity on the effective date of the election. To alleviate these concerns and simplify tax administration, this revenue procedure provides that, if the requirements of this revenue

procedure are satisfied, the IRS will treat an election under § 301.7701-3(c) to classify a foreign eligible entity that is a qualified entity (as defined in section 3.02 of this revenue procedure) as a partnership or disregarded entity as an election to be treated as a partnership or disregarded entity (as appropriate) rather than as an association taxable as a corporation.

5. 2. Background

.01. Section 301.7701-1(a)(1) states that the Internal Revenue Code (Code) prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is amatter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

.02. Section 301.7701-1(b) provides that the classification of organizations that are

recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

.03. Section 301.7701-2(a) defines the term “business entity” as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an

entity separate from its owner under § 301.7701-3 (“a disregarded entity”)) that is not

properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classi- fied as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the samemanner as a sole proprietorship, branch, or division of the owner.

.04. 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. 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. Elections are necessary only if an eligible entity does not want its default classification or if an eligible entity chooses to change its classification.

.05. Section 301.7701-3(b)(2)(i) provides that, except for certain existing entities described in § 301.7701-3(b)(3), 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 member that does not have limited liability.

.06. Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, *Entity Classification Election* , with the appropriate IRS Service Center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such 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.

.07. Section 301.7701-3(c)(1)(ii) provides that an eligible entity required to file a federal tax or information return for the taxable year for which an election is made must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective.

.08. Section 301.7701-3(c)(1)(iv) provides in part that, if an eligible entity makes an election under paragraph (c)(1)(i) of this section to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the 60 months succeeding the effective date of the election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph (c)(1)(iv).

.09. Section 301.7701-3(c)(2)(i) provides that an election made under §301.7701-3(c)(1)(i) of this section must be signed by: (A) each member of the electing entity who is an owner at the time the election is filed; or (B) 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.

6. 3. Scope

.01. *In General*. This revenue procedure provides guidance on the classification for federal tax purposes of a business entity that is a qualified entity (as defined in section 3.02 of this revenue procedure) and is in lieu of the letter ruling process ordinarily used to obtain relief for a late change of entity classification election filed pursuant to §§ 301.7701-3(c), 301.9100-1, and 301.9100-3. Accordingly, user fees do not apply to corrective actions under this revenue procedure.

.02. *Qualified Entity*. For purpose of this revenue procedure, a business entity is a “qualified entity” if the following conditions are satisfied:

(1) The business entity is an eligible entity under § 301.7701-3(a);

(2) The business entity is foreign under § 301.7701-5(a);

(3) The classification of the business entity, either by default under § 301.7701-3(b)(2)(i)(B) for a newly formed or newly relevant eligible entity, or by election under § 301.7701-3(c) for an existing relevant entity, would be or was an association taxable as a corporation;

(4) As permitted under §301.7701-3(c), the business entity filed an otherwise valid Form 8832 electing to be treated for federal tax purposes,
(a) As a partnership based on the reasonable assumption that it had two or more owners as of the effective date of the election; or
(b) As a disregarded entity based on the reasonable assumption that it had a single owner as of the effective date of the election;
(5) For federal tax purposes, either:
(a) The business entity and its actual and purported owners (or owner) have treated the entity consistently with the election on the otherwise valid Form 8832 on all filed information and tax returns; or
(b) No information or tax returns have been required to be filed since the effective date for the election made on the otherwise valid Form 8832; and

(6) The period of limitations on assessments (as established under section 6501(a) of the Code) has not ended for any taxable year of the business entity or its actual and purported owners (or owner) affected by the election made on the otherwise valid Form 8832.

.03. *Entities That Fail to Qualify for Relief Under This Revenue Procedure*. A business entity that does not qualify for relief under this revenue procedure may request relief through the letter ruling process in accordance with Rev. Proc. 2010-1, 2010-1 I.R.B. 1 (or its successor).

7. 4. Application

.01. If a qualified entity files an otherwise valid Form 8832 to be classified as a partnership for federal tax purposes but it is later determined that the qualified entity had a single owner for federal tax purposes as of the effective date of the election, the IRS will treat the Form 8832 as an election to classify the qualified entity as a disregarded entity for federal tax purposes provided that:

(1) The qualified entity's actual single owner and purported owners as of the effective date of the election file original or amended returns consistent with the treatment of the entity as a disregarded entity for any taxable year that would have been affected if the election had been made to treat the qualified entity as a disregarded entity for federal tax purposes;
(2) All required amended returns are filed before the close of the period of limitations on assessments under § 6501(a) for any relevant taxable year; and
(3) A corrected Form 8832 is filed with the appropriate Internal Revenue Service Center and a copy of the corrected Form 8832 is attached to the single owner's amended return for the taxable year during which the original election was made as required under § 301.7701-3(c)(1)(ii). The statement “FILED PURSUANT TO REVENUE PROCEDURE 2010-32” must be included across the top of the corrected Form 8832. Additionally, the corrected Form 8832 must satisfy the requirements of § 301.7701-3(c)(2)(i).

.02. If a qualified entity files an otherwise valid Form 8832 electing to be classified as a disregarded entity for federal tax purposes but it is later determined that the qualified entity had two or more owners for federal tax purposes as of the effective date of the election, the IRS will treat the Form 8832 as an election to classify the qualified entity as a partnership for federal tax purposes provided that:

(1) The qualified entity files information returns and its actual owners file original or amended returns consistent with the treatment of the entity as a partnership for any taxable year that would have been affected if the original election had been made to treat the qualified entity as a partnership for federal tax purposes;

(2) All required information and amended returns are filed before the close of the period of limitations on assessments under § 6501(a) for the relevant taxable year; and (3) A corrected Form 8832 is filed with the appropriate Internal Revenue Service Center and a copy of the corrected Form 8832 is attached to the owners' amended returns for the taxable year during which the original election was made as required under § 301.7701-3(c)(1)(ii). The statement “FILED PURSUANT TO REVENUE PROCEDURE 2010-32” must be included across the top of the corrected Form 8832. Additionally, the corrected Form 8832 must satisfy the requirements of § 301.7701-3(c)(2)(i).

8. 5. Effective Date

This revenue procedure is effective on September 7, 2010. Any qualified entity thatmeets the requirements of this revenue procedure as of September 7, 2010, may seek relief under this revenue procedure.

9. 6. Drafting Information

The principal author of this revenue procedure is Bryan A. Rimmke of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Rimmke at (202) 622-3050 (not a toll-free call).