

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200439005**

Release Date: 9/24/04

Index Numbers: 9100.22-00;877.08-00

Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:INTL:BR1 – PLR-102370-04

Date:
May 27, 2004

DO:

TY:

Legend
Taxpayer =

Date B =
Year One =

Year Two =
Year Three =
Year Four =
Country A =
CPA Firm =
New CPA =
Firm
Individual A =

Dear :

This replies to your letters dated December 15, 2003, April 27, 2004, and May 10, 2004, in which you request an extension of time under Treas. Reg. § 301.9100-1 and § 301.9100-3 to submit a ruling request pursuant to section 877(c)(1) of the Internal Revenue Code (the "Code") and section IV of Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, 1998-2 C.B. 29.

The ruling contained in this letter is predicated upon facts and representations submitted by taxpayer and accompanied by a penalty of perjury statement executed by taxpayer. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer is a citizen and resident of Country A. He obtained his green card in Year One. In Year Two, he retired and permanently relocated to Country A where he has lived with his wife ever since.

Also in Year Two, Taxpayer surrendered his green card on Date B. Individual A with CPA Firm was aware of Taxpayer's tax status as a part-year nonresident for Year Two as Individual A prepared a "Dual Status" return for that year. However, Individual A did not advise Taxpayer of the U.S. tax ramifications of surrendering his green card in Year Two before Taxpayer surrendered his green card. Individual A also did not advise Taxpayer of the requirement to request a ruling for relief under IR.C. 877 within one year of Date B.

Taxpayer engaged CPA Firm to prepare and file his U.S. Federal income tax return for Year Three. During this process, CPA Firm filed two applications for extensions of time to file the tax return. Nevertheless, Individual A became uncommunicative when Taxpayer attempted to determine the status of his return. Eventually it became apparent to Taxpayer that Individual A was not going to respond to Taxpayer's inquiries and that the deadline for filing the tax return would not be met. Accordingly, Taxpayer engaged the services of New CPA Firm.

Upon gathering the Taxpayer's information and documents to file the Year Three return, New CPA Firm discovered that the Taxpayer had surrendered his green card on Date B, and determined that the one-year period for Taxpayer to file his request for a ruling under section 877 had expired. New CPA Firm recommended that Taxpayer seek relief under Treas. Reg. § 301.9100-1 and § 301.9100-3.

Treasury Regulation § 301.9100-1(c) provides that the Commissioner in his discretion may grant a taxpayer a reasonable extension of time, under the standards set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1 provides standards to be used by the Commissioner in determining whether relief should be granted to allow an extension of time to make a regulatory election.

Treasury Regulation § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that

the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, Section IV of Notice 97-19 fixes the time for an individual to submit a ruling request under § 877 of the Code. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 45 days from the date of this ruling letter to submit a ruling request under § 877 of the Code as provided by Section IV of Notice 97-19, as modified by Notice 98-34.

Except as expressly provided herein, no ruling has been requested and none is expressed as to the application of any other section of the Code or regulations to the facts presented. Specifically, no opinion is expressed as to the tax consequences under § 877 of the Code.

A copy of this ruling letter should be associated with the ruling request filed pursuant to Notice 97-19.

This ruling is directed only to the taxpayer who requested 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 in this office, a copy of this letter is being sent to Taxpayer.

Sincerely,

Allen Goldstein
Reviewer
Office of the Associate Chief Counsel
(International)

Enclosure (1) Copy for §6110 purposes
cc: