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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 897.00-00, 1445.02-08,
9100.00-00, 9100.22-00

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:INTL:B04
PLR-115274-07
Date:
August 10, 2007

LEGEND

Taxpayer =

Sub 1 =

Year 1 =

Dear _____ :

This replies to a letter dated March 28, 2007, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3). The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the

material submitted in support of the request for ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a foreign corporation, wholly and directly owns Sub 1, a domestic corporation. In Year 1, Sub 1 distributed to Taxpayer a promissory note of an amount that exceeded Sub 1's earnings and profits.

Under Treas. Reg. § 1.897-1(c)(1)(ii), an interest other than solely as a creditor in a domestic corporation is a United States real property interest (USRPI) unless it is established that the corporation was not a U.S. real property holding corporation (USRPHC) during the period described in IRC § 897(c)(1)(A)(ii). When a foreign person disposes of a USRPI, any gain realized is taxed as though the foreign person was engaged in a trade or business within the United States pursuant to section 897(a)(1).

Under Treas. Reg. § 1.897-5T(b)(2), if a USRPHC distributes property with respect to its stock to a foreign shareholder, the distributee shall be treated as having disposed of a USRPI to the extent that, with respect to the distributee, all or a part of the distribution is treated as a sale or exchange of stock pursuant to section 301(c)(3)(A). A USRPHC that distributes any property under section 301 must withhold under the rules of section 1441 on the full amount of the distribution or may withhold under the rules of section 1441 on the portion of the distribution that is reasonably estimated to be a dividend and withhold 10 percent on the remainder of the distribution. Treas. Reg. § 1.1441-3(c)(4)(i)(A) and (B).

A foreign person may establish that an interest in a domestic corporation is not a USRPI by obtaining a statement from the domestic corporation using the procedures of Treas. Reg. § 1.897-2(g) and (h). The domestic corporation must furnish a copy of that notice to the IRS within 30 days of mailing the statement to the interest holder for the statement to be effective. Treas. Reg. § 1.897-2(h)(2). If the statement is issued to the interest holder pursuant to these procedures, then no withholding under section 1445 is required. Treas. Reg. § 1.897-2(g)(1)(ii)(B).

Taxpayer did not request or receive a statement from Sub 1 certifying that the interest in Sub 1 was not a USRPI as of the date of the distribution. Consequently, the required notice was not sent to the IRS.

Sub 1 is a domestic corporation and thus, in the absence of the statement and notice described in the previous paragraph, an interest in Sub 1 is presumed to be a USRPI. To the extent that the distribution in Year 1 resulted in a sale or exchange of stock by Taxpayer pursuant to section 301(c)(3)(A), Taxpayer was presumed to have disposed of a USRPI, requiring withholding under section 1445. Treas. Reg. §§ 1.897-1(c)(1)(ii) and -5T(b)(2).

Taxpayer now seeks relief under the provisions of Treas. Reg. §§ 301.9100-1 and -3 to request the applicable statement from Sub 1 and for Sub 1 to file the applicable notice late.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant 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 Code, except subtitles E, G, H, and I. Treas. Reg. § 301.9100-1(b) 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 provides standards for extensions of time for making regulatory elections. 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, the statement and notice fall within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer and Sub 1 satisfy Treas. Reg. § 301.9100-3(a). Accordingly, pursuant to Treas. Reg. § 301.9100-1 and Treas. Reg. § 301.9100-3, Taxpayer and Sub 1 are granted an extension of time until 60 days from the date of this ruling letter to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3) with respect to the distribution that occurred in Year 1.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to comply with the statement and notice requirements. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be attached with the statement and the notice mailed to the IRS.

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

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

David Bailey
Assistant to the Branch Chief
Associate Chief Counsel
(International, Branch 4)

Enclosure:
Copy for 6110 Purposes