

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
April 17, 2012

Legend:

- Taxpayer =
- Country A =
- LLC =
- State =
- b =
- c =
- Year 1 =
- Business X =

Dear \_\_\_\_\_ :

This replies to a letter dated September 20, 2011, as supplemented by correspondence dated March 8, 2012 and April 5, 2012, from your authorized representative, requesting a ruling that your net operating losses from Business X may be used in future years regardless of your residency status.

FACTS

Taxpayer, a Country A national, is a resident alien solely by reason of section 7701(b)(3) of the Code. LLC is a State limited liability company wholly owned by Taxpayer. LLC is engaged in Business X within and without the United States, directly and through wholly-owned U.S. limited liability companies with an office in State. LLC and its U.S. subsidiaries are disregarded as separate from Taxpayer for U.S. federal

income tax purposes. By reason of the activities of LLC and its U.S. subsidiaries, Taxpayer represents that he has a net operating loss.

Taxpayer plans to relocate to Country A in Year 1 and become involved in Business X in and around Country A. Taxpayer represents that his relocation to Country A will be for a period of b to c years, after which he will return to live in the United States. During the period that he is living in Country A, Taxpayer represents that he will be a nonresident alien for U.S. federal income tax purposes, and a resident of Country A for purposes of its domestic law and the U.S.-Country A income tax treaty. During this period LLC and its subsidiaries will continue to carry on Business X in the United States through a fixed place of business in the United States. Taxpayer further represents that the profit or loss from Business X in the United States will be attributable to that fixed place of business, and thus taxable as business profits under Article 7 of the U.S.-Country A treaty. When Taxpayer returns to the United States, he will again be a resident alien for U.S. federal income tax purposes. Taxpayer represents that LLC and its U.S. subsidiaries will continue to be managed and controlled in the United States while Taxpayer is a Country A resident.

Taxpayer further represents that some of his unexpired net operating losses from Business X would have been allocated and apportioned to income effectively connected with the conduct of a trade or business in the United States had he been taxed as a nonresident alien in such years.

Taxpayer requests a ruling that will permit him to use that portion of his unexpired net operating losses from Business X against any effectively connected gross income of Business X during the period he is taxed as a nonresident alien. Similarly, Taxpayer requests a ruling that he may carry over any properly apportioned net operating loss from Business X while he is a nonresident alien to taxable years after he reacquires U.S. resident status. Taxpayer also requests a ruling that his unused net operating losses from Business X generated while he was a resident alien, if still available, may be carried over to his taxable years after he reacquires U.S. resident status.

## LAW & ANALYSIS

Section 1.1-1(b) of the Income Tax Regulations generally provides that a resident alien individual is liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.

Section 7701(b)(1)(A)(ii) of the Internal Revenue Code (Code) provides that an alien individual shall be treated as a resident alien with respect to any calendar year if such individual meets a “substantial presence test” in section 7701(b)(3).

Section 871(b)(1) provides that a nonresident alien individual engaged in a trade or business within the United States during the taxable year shall be taxable as provided in

section 1 or 55 (i.e., graduated rates) on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

Section 873(a) provides that deductions are allowed to a nonresident alien individual for purposes of section 871(b) only if and to the extent that they are connected with income that is effectively connected with the conduct of the nonresident alien's trade or business in the United States, with certain exceptions not relevant to this ruling. The rules governing the proper apportionment and allocation of deductions to a nonresident alien's income from a U.S. trade or business are found generally in section 861 et seq. of the Code. See Treas. Reg. § 1.873-1(a)(1).

Section 1.861-8(e)(8) provides that a net operating loss deduction allowed under section 172 shall be allocated and apportioned in the same manner as the deductions giving rise to the net operating loss deduction.

Section 172(b) generally allows for net operating loss carrybacks and carryovers, without regard to the resident status of a taxpayer. According to the legislative history of section 172(b), a nonresident alien's net operating loss may be carried, in accordance with section 172(b), to other taxable years for which the tax is imposed pursuant to section 871(b). See H. Rep. No. 89-1450, 89th Cong. 2d Sess., at 78-79 (1966).

Based solely on the information submitted and the representations made, it is held that:

- 1) The portion of Taxpayer's unused net operating losses from Business X that were generated while he was taxed as a U.S. resident, and that would have been allocated and apportioned, in accordance with the rules in Treas. Reg. § 1.861-8(e)(8), to the gross income of Business X had he been taxed on such income as a nonresident alien for such years, may be used to the extent provided in Treas. Reg. § 1.861-8 to offset gross income effectively connected with the conduct of Business X in the United States while he is a nonresident alien.
- 2) Taxpayer may carry over any unused net operating losses from Business X allocated and apportioned to income effectively connected with the conduct of Business X in the United States while he is taxed as a nonresident alien, and may apply such losses against gross income from Business X after he reacquires U.S. resident status.
- 3) Taxpayer may carry over any unused net operating losses from Business X generated while he was taxed as a U.S. resident, if still available, against his gross income after he reacquires U.S. resident status. The years in which Taxpayer is a nonresident alien will be taken into account in determining whether any such unused net operating losses from Business X are still available under section 172(b)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed regarding whether Taxpayer has properly computed the portion of his unused net operating losses that may be carried over in accordance with this ruling.

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 with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Elizabeth Karzon  
Branch Chief, Branch 1  
(International)