



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

May 12, 2016

Number: **2016-0041**  
Release Date: 6/24/2016

CC:PSI:B01  
GENIN-115606-16

UIL: 761.01-00

Taxpayer =

Dear :

This letter refers to a document received by our office on behalf of Taxpayer, electing to be excluded from the provisions of Subchapter K, pursuant to section 761 of the Internal Revenue Code. Our office is unable to process this election. Please file the election in accordance with the regulations under section 761.

Section 1.761-2(b)(2)(i) of the Income Tax Regulations provides that any unincorporated organization that meets certain requirements and wishes to be excluded from all of subchapter K must make the election provided for in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065. **The return should be filed with the internal revenue officer with whom a partnership return, Form 1065, would be required to be filed if no election were made.** Where, for the purpose of determining such officer, it is necessary to determine where the electing organization has its principal office or place of business, the principal office or place of business of the person filing the return will be considered the principal office or place of business of the organization. The partnership return must be filed no later than the time prescribed by section 1.6031-1(e) (including extensions) for filing the partnership return for the first taxable year for which exclusion from subchapter K is desired. The partnership return should contain only the name or other identification and the address of the organization together with the information on the return, or in a statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization

qualifies under section 1.761-2(a)(1) and (2) or (3); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available.

Section 1.761-2(b)(2)(ii) provides that if an unincorporated organization does not make the election as provided in section 1.761-2(b)(2)(i), it shall nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization.

We are returning your original correspondence with this letter so that you can file it with the appropriate service center. If there are any questions, please contact me at

Sincerely,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)