

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

In re:

Refer Reply To:

CC:INTL:PLR-103410-01

Date:

October 4, 2001

### LEGEND

Taxpayer =

Affiliate One =

Affiliate Two =

Corporation X =

Year 1 =

Year 2 =

Date A =

Individual A =

Law Firm =

Dear :

This replies to a letter dated January 12, 2001, in which Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 for an extension of time to request from the Internal Revenue Service the withholding certificate described in § 1.1445-3(c), where the request should have been made on or before 90 days prior to Date A.

The ruling contained in this letter is predicated upon facts and representations submitted by the 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 a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

In November of Year 1, Law Firm prepared a memorandum indicating in substance that because Affiliate One was a USRPHC within the meaning of § 897(c)(2) and, thus, a USRPI, Affiliate Two's sale of the Affiliate One shares to Taxpayer could be taxable under § 897(a). However, the memorandum stated that because no gain would arise

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from the sale, there would be no tax liability under § 897(a).

Individual A is the Vice President, Taxes of Corporation X and is responsible for all U.S. federal tax matters affecting affiliates of Corporation X, including Taxpayer. The affidavit of Individual A describes the events that led Individual A to fail to file Form 8288-B, Application for Withholding Certificate for Dispositions of U.S. Real Estate Property Interests, on behalf of Taxpayer at least 90 days prior to Date A. Taxpayer's Federal income tax return for Year 2, the tax year in which the withholding certificate should have been requested, and Taxpayer's Federal income tax returns for subsequent years, are not being examined by a district director, an appeals office, or a Federal court.

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

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 § 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, § 1.1445-3(a) provides that the IRS will act on an application for withholding certificate not later than the 90<sup>th</sup> day after it is received. 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 § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to request from the Internal Revenue Service the withholding certificate described in § 1.1445-3(c), where the request should have been made on or before 90 days prior to Date A.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to apply for a withholding certificate. § 301.9100-1(a).

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

A copy of this ruling letter should be associated with the request for a withholding

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certificate.

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.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the Taxpayer and the other authorized representative.

Sincerely,

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