



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR:

FROM: Anne P. Shelburne, Assistant to the Branch Chief
Associate Chief Counsel (International), Branch 6

SUBJECT:

LEGEND

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Location A	=
Location A Corporation	=
New Parent	=
Old Parent	=
US Corp	=
US Sub	=

Pursuant to section 8.07(2)(b) of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 34, you are hereby notified that the National Office has declined to rule on the above-mentioned private letter request submitted by a taxpayer under your jurisdiction. Pursuant to Treas. Reg. § 1.936-7(c), this revocation determination is within the purview of your office. The circumstances of the revocation request are set forth below.

BACKGROUND

In a letter dated Date 1, US Sub requested permission to revoke the § 936 possessions corporation election for Location A Corporation, effective for Location A Corporation's taxable year ending Date 2, and all subsequent tax years. Location A Corporation is a wholly-owned domestic subsidiary of US Sub, and until recently maintained manufacturing operations in Location A. US Sub, a subsidiary of US Corp, was part of Old Parent's consolidated return group for Federal tax purposes until Date 3, a date prior to Date 2, when Old Parent transferred the stock of its subsidiary, US Corp, to New Parent in exchange for cash. As a result of the transfer, US Corp joined New Parent's Federal consolidated tax return group. Location A Corporation was not a member of Old Parent's consolidated return group prior to the Date 3 transfer, and similarly did not become a member of New Parent's consolidated return group subsequent to the transfer.

Old Parent and New Parent desire to make a joint election under Internal Revenue Code section 338(h)(10), which in effect treats the sale of the stock of US Corp as a sale of US Corp's assets, which include the stock of US Sub. To make a § 338(h)(10) election, Location A Corporation's § 936 election must be revoked so that it may be included in Old Parent's Federal consolidated tax return for its taxable year ending Date 2.

In its Date 1 letter, US Sub made the following representations. The request for revocation of Location A Corporation's § 936 election is to be permanent, and New Parent does not intend to re-elect § 936 treatment for Location A Corporation. New Parent has discontinued Location A Corporation's manufacturing operations in Location A. Furthermore, US Sub also represented that Location A Corporation has not generated net operating losses since its § 936 election became effective for its tax year ending Date 4. US Sub stated that Location A Corporation will sacrifice current § 936 benefits if the revocation is granted.

Treas. Reg. § 1.936-7(c), which governs requests for revocation of § 936 possessions corporation elections, provides the following,

An election under [Internal Revenue Code] section 936(a) may be revoked during the first ten years of section 936 status only with the consent of the Commissioner, and without the Commissioner's consent after that time. . . . [R]equests to revoke . . . should be addressed to the District Director having jurisdiction over the taxpayer's tax return.

CONCLUSION

Whereas Location A Corporation's § 936 possessions corporation election was made for its taxable year ending Date 2, and therefore has not been in effect for ten

years, US Sub must address its request for revocation to the appropriate District Director in accordance with the language of Treas. Reg. § 1.936-7(c). Accordingly, we believe that a letter ruling is not an appropriate manner to respond to this request. In this particular case, we recommend that the District Director permit revocation of Location A Corporation's § 936 possessions corporation election.