

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B01

PLR-109861-22

Date:

September 15, 2022

Legend

Taxpayer =

LLC =

Country =

X

State A =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

CPA Firm =

Dear :

This replies to a letter dated May 15, 2022, from your authorized representative, in which you request an extension of time pursuant to Treas. Reg. § 301.9100-1(c) and Treas. Reg. § 301.9100-3 to permit Taxpayer to file the appropriate statement under Treas. Reg. § 1.884-2T(d)(5) with respect to its Year 1 tax year in connection with an election under Treas. Reg. § 1.884-2T(d)(4)(i) by LLC to increase its earnings and profits by the amount determined under Treas. Reg. § 1.884-2T(d)(4)(ii).

The rulings contained in this letter are based upon facts 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 a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a Country X Entity, is classified as a corporation for federal income tax purposes and is a calendar-year taxpayer. As of the beginning of its Year 1 tax year, Taxpayer wholly owned LLC, a State A limited liability company that was treated as a disregarded entity for federal tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii) and that was engaged in a U.S. trade or business.

Taxpayer engaged CPA Firm for tax consulting and compliance matters, including the preparation and filing of the appropriate U.S. federal income tax returns for Year 1 and Year 2. Taxpayer reported and paid branch profits tax on the after-tax earnings of LLC, when applicable.

On Date 1, Year 2, LLC filed a Form 8832 (Entity Classification Election) to elect to be treated as a corporation for federal income tax purposes with retroactive effect to Date 2, Year 2. CPA Firm was engaged to assist with advice on a transaction involving this election. As a consequence of the election, LLC's assets were treated as contributed to a newly formed association in a transaction that was described in section 351 immediately before the close of the day before the entity classification effective date (*i.e.*, Date 3, Year 1). CPA Firm discussed with Taxpayer the possibility of LLC making an election under Treas. Reg. § 1.884-2T(d)(4)(i). Taxpayer intended, with the assistance of CPA Firm, for LLC to make the election and for CPA Firm to include the required statements with the appropriate tax returns.

Under Treas. Reg. § 1.884-2T(d)(3), if a foreign corporation (transferor) engaged in the conduct of a U.S. trade or business makes a transfer under section 351(a) of the Code of all or part of its U.S. assets to a U.S. corporation (transferee) in exchange for stock or securities in the transferee, the transferor's dividend equivalent amount will be determined without regard to the section 351 transfer, provided the transferee makes an election under Treas. Reg. § 1.884-2T(d)(4)(i) to increase its earnings and profits by an allocable portion of the transferor's effectively connected earnings and profits and non-previously taxed accumulated earnings. The election is generally only effective if the transferee attaches the requisite statement described in Treas. Reg. § 1.884-2T(d)(4)(i) (transferee election statement) to its timely filed (including extensions) income tax return for the taxable year in which the transaction occurs. The transferor must also file a statement agreeing that, upon disposition of part or all of the stock or securities it owns in the transferee, it will treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of the effectively connected earnings and profits and non-previously taxed accumulated earnings and profits that was allocated from the transferor corporation to the transferee corporation pursuant to the election

under Treas. Reg. § 1.884-2T(d)(4)(i) (transferor election statement). Treas. Reg. § 1.884-2T(d)(5)(i). This statement must be attached to a timely filed (including extensions) return of the transferor for the taxable year in which the section 351 transaction occurs. Treas. Reg. § 1.884-2T(d)(5)(iv).

CPA Firm prepared and filed Taxpayer's Year 1 Form 1120-F consistent with the intent to make the election but inadvertently failed to prepare and attach the transferor election statement as required by Treas. Reg. § 1.884-2T(d)(5)(iv). In reviewing the tax return CPA Firm prepared, Taxpayer did not identify that the statement was missing.

CPA Firm also prepared and filed LLC's Year 2 Form 1120 and included a transferee election statement pursuant to Treas. Reg. § 1.884-2T(d)(4)(i). In the course of preparing the return, CPA Firm discovered that Taxpayer inadvertently failed to file the transferor election statement. After learning this information, Taxpayer directed CPA Firm to begin the process to request relief. The IRS did not discover Taxpayer's failure to timely file the required statement before this request for relief was filed.

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 Internal Revenue 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 when the deadline for making the election is other than a due date prescribed by statute.

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. Except as otherwise provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. § 301.9100-3(b)(1)(i).

In the present situation, Treas. Reg. § 1.884-2T(d)(5)(iv) fixes the time for Taxpayer to file the statement. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that it 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 acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Accordingly, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the appropriate statement under Treas. Reg. § 1.884-2T(d)(5) with respect to its Year 1 tax year. The granting of an extension of time is not a determination that LLC and Taxpayer are otherwise eligible to make the election. Treas. Reg. § 301.9100-1(a).

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 under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from the transactions not specifically covered by the above rulings. In particular, no opinion is expressed with respect to (i) the application of section 351 and related provisions to the transactions discussed, and (ii) whether the federal income tax return of Taxpayer was timely filed (including extensions).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard F. Owens
Senior Technical Reviewer, Branch 1
Associate Chief Counsel (International)

Enclosure:
Copy for 6110 Purposes

cc: