

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:BR1
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Date:
July 27, 2005

Legend

- Taxpayer =
- Country =
- X
- CPA Firm =
- Date A =
- Date B =
- Date C =
- Date D =
- Date E =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =

Dear :

This is in response to a letter dated January 5, 2005, requesting that Taxpayer be granted an extension of time under Treas. Reg. § 301.9100-3 to file Form 8848, Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c), for the tax year ended Date E. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is 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 is a company incorporated under the laws of Country X on Date A. Taxpayer conducted no business in Year 1. In the first six months of Year 2, Taxpayer conducted business in Country X and the United States. As of Date B, Taxpayer ceased all activity. Beginning on Date C, Taxpayer resumed its activities solely in Country X. Taxpayer continues to operate solely in Country X.

In Year 2, Taxpayer's activities in the United States resulted in its having a U.S. trade or business taxable under Code section 882. Taxpayer did not have experience with federal or branch profits tax matters, and believed that because it held cash in a U.S. bank account at the end of Year 2, it owned U.S. assets and, as a result, had a U.S. trade or business. Taxpayer believed that it terminated such business in Year 3. Taxpayer retained CPA Firm in Year 4 to assist it with the preparation of its return for Year 3. In the course of its preparation, CPA Firm determined that Taxpayer had terminated its business in Year 2.

Under Treas. Reg. § 1.884-2T(a)(2), a foreign corporation is treated as having completely terminated its U.S. trade or business for any taxable year only if it meets certain conditions, which include attaching to its income tax return for the year of complete termination a waiver of the period of limitations. Treas. Reg. § 1.884-2(a)(2)(ii) provides that such waiver must be executed on Form 8848, or substitute form, and must extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year. The waiver must be filed on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination. Thus, because Taxpayer completely terminated its U.S. branch in Year 2, it was required to file Form 8848 with its Form 1120F by Date D, the extended due date for its Year 2 return.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer 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) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as one whose due date is prescribed by regulation, revenue ruling, revenue procedure, notice, or announcement.

Under Treas. Reg. § 301.9100-3(a), requests for extensions of time for regulatory elections will be granted when the taxpayer provides 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 within the meaning of Treas. Reg. § 301.9100-3(b), subject to the conditions set forth in Treas. Reg. § 301.9100-3(b), and that the grant of relief will not prejudice the interests of the Government within the meaning of Treas. Reg. § 301.9100-3(c).

In the present situation, Treas. Reg. § 1.884-2(c)(2)(iii) fixes the time to file Form 8848. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer 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 satisfies the standards of Treas. Reg. § 301.9100-3. Accordingly, taxpayer is granted an extension of time, until 60 days from the date of this ruling letter, to file Form 8848 for the tax year ended on Date E.

As provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file Form 8848.

No ruling is requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented. Specifically, no opinion is expressed as to whether Taxpayer terminated its U.S. trade or business in Year 2, the tax consequences of filing Form 8848 late under the provisions of any other section of the Code and regulations, or the tax treatment of any conditions existing at the time of, or resulting from, filing Form 8848 late that are not specifically set forth in the above ruling.

A copy of this ruling letter should be attached to the Form 8848 that Taxpayer files for the tax year ended on Date E.

This ruling is directed only to the taxpayer requesting 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.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Associate Chief Counsel (International)