

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200923006**
Release Date: 6/5/2009

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 9100.00-00

, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-141197-08
Date:
February 20, 2009

TY:

Taxpayer =
Partnership =
Year 1 =
Accounting Firm 1 =
Accounting Firm 2 =
Date 2 =
Date 3 =

Dear :

This letter is in response to your correspondence of September 15, 2008 where Taxpayer requests a ruling for an extension of time under §§ 301.9100-1(c) and 301.9100-3 to file a waiver of period of limitations under § 1.884-2(a)(2)(ii).

Taxpayer was a foreign corporation engaged in a trade or business in the United States indirectly through an investment in a domestic limited liability company, Partnership. Partnership was engaged in rental real estate activity in the United States. Partnership disposed of its United States rental real estate in Year 1. Partnership then made a liquidating distribution to Taxpayer. After the distribution, Taxpayer had no further trade or business or assets in the United States. Taxpayer had no further income that was effectively connected with the conduct of a trade or business in the United States.

Taxpayer relied on Accounting Firm 1 to timely file Taxpayer's Year 1 1120F. Accounting Firm 1 prepared Taxpayer's U.S. tax returns for the tax years prior to Year 1 and all prior years' tax returns were filed on time within the extended periods. However, due to an internal policy change, Accounting Firm 1 could not handle Taxpayer's Year 1 U.S. tax filings. Taxpayer was not notified about the internal policy change on a timely basis and Accounting Firm 1 did not file Taxpayer's Year 1 1120 F by the due date and did not file a request for extension of said due date. Taxpayer then engaged

Accounting Firm 2 to prepare the Year 1 Form 1120 F and said return was filed on Date 2.

Accounting Firm 2 calculated and included the branch profits tax on Taxpayer's Year 1 1120F and did not inform Taxpayer about the possibility of claiming an exemption on branch profits tax by filing a waiver of period of limitation under § 1.881-2(a)(2)(ii). Taxpayer approached another tax professional firm in Date 3 to review the Year 1 Form 1120F. This firm informed Taxpayer that the branch profits tax paid in Year 1 could have been exempt if a waiver of period of limitation under §1.884-2(a)(2)(ii) had been filed on or before the due date for the Year 1 tax return. The firm informed Taxpayer of the possibility of filing a request for a letter ruling granting extensions of time under §§ 301.9100-1 and 301.9100-3 to file a waiver of period of limitations under §1.884-2(a)(2)(ii). As a result, Taxpayer filed its request for a letter ruling.

Taxpayer requests a ruling for an extension of time under §§ 301.9100-1(c) and 301.9100-3 to file a waiver of period of limitations under § 1.884-2(a)(2)(ii). If granted, Taxpayer requests and extension of time be allowed until 60 days from the date of this letter ruling to make the above election under § 1.884-2(a)(2)(ii).

Treas. Reg. §1.884-2(a)(2)(ii) provides that the waiver referred to in § 1.884-2T(a)(2)(i)(D) 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.

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 § 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 § 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.

Treas. Reg. § 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer —

(i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) inadvertently failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

The affidavit presented shows that Taxpayer acted reasonably and in good faith, having reasonably relied upon Accounting Firm 1 and Accounting Firm 2, qualified tax accounting firms who both failed to make, or to advise the taxpayer to make, the election. Furthermore, the affidavits show that, after exercising due diligence, Taxpayer was unaware of the necessity for the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer —

(i) seeks to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the taxpayer requests relief (taking into account § 1.6664-2(c)(3)) and the new position requires a regulatory election for which relief is requested;

(ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time relief is requested. Taxpayer was not informed of all material respects of the election and its tax consequences. Furthermore, Taxpayer is not using hindsight in requesting relief. Taxpayer has represented that specific facts have not changed since the original deadline that made the election advantageous.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in part, that the interests of the government

are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

Under these criteria, the interests of the government are not prejudiced in this case. The Taxpayer has represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

Accordingly, the consent of the Commissioner is hereby granted for an extension of time to file the forms necessary to make the election pursuant to §§ 301.9100-1 and-3 for the Taxpayer under §1.884-2(a)(2)(ii). The Taxpayer has an extension of 60 days from date of this ruling in which to make this election.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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. Specifically, no opinion is expressed as to whether Taxpayer is eligible for an exemption for branch profits tax under § 1.884-2T(a)(1) if a waiver of period of limitation under § 1.881-2(a)(2)(ii) is filed.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
(International)

cc: