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From:

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To:

Cc:

Subject: IRC 982: effect on third parties

You had asked if a person related to the taxpayer to whom a foreign document request is made would be barred by IRC 982 from entering foreign documents as evidence if the taxpayer was barred from introducing such evidence. We conclude that IRC 982 may be read literally to bar only the taxpayer from introducing the foreign documents as evidence. Thus if the Service seeks to bar these documents reliably from trial, it should make a formal document request to each potential party with access to the foreign documents.

The Service can move to exclude foreign records from civil court proceedings in situations described by IRC 982. The statutory text states that "the taxpayer" is prohibited from introducing the foreign-based documentation if the taxpayer fails to provide such documents in response to a foreign document request. The U.S. Tax Court has interpreted this provision literally, holding that IRC 982 did not bar the individual petitioners from introducing the requested foreign-based records where the FDR had been issued only to their wholly-owned entity. *Santa Maria v. Commissioner*, T.C. Memo. 1994-622. Note that where an FDR has been issued to a taxpayer who fails to comply with the FDR and becomes a petitioner in the proceeding, then that taxpayer is barred from introducing the requested records even if structured as a submission by a third party. See *Flying Tigers Oil Co. v. Commissioner*, 92 T.C. No. 82 (1989) (petitioner is barred from introducing documents attached to a third party affidavit when an FDR for the documents had been issued to the petitioner).

Please do not hesitate to contact me with any questions or concerns.