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**From:** [REDACTED]

**Sent:** Friday, July 25, 2014 11:47:18 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** FW: IRC 6012 Filing Requirements of a Foreign Trust which becomes a U.S. Trust or Vice-Versa

Hi

Please see [\[REDACTED\]](#) email below.

Thanks,

**From:**

**Sent:** Friday, July 25, 2014 11:45 AM

**To:**

**Cc:**

**Subject:** FW: IRC 6012 Filing Requirements of a Foreign Trust which becomes a U.S. Trust or Vice-Versa

**as discussed, could you please forward this email to [REDACTED] and process as CCA. Let me know if you have any questions. Thank you very much.**

In the email below, you have asked about the income tax return filing requirements of a trust that converts from a U.S. trust to a foreign trust, or vice versa, for the year of the conversion. We conclude that the trust, just like an alien individual who has both nonresident and resident status during a single tax year, will have to treat the year of conversion as a "dual status" tax year. Accordingly, the trust must both file the proper year-end tax return (Form 1041 or Form 1040NR) and attach a statement showing its income for the part of the year before the conversion.

Section 6012 sets forth requirements for when an individual or entity is required to file a U.S. federal income tax return. In general, the United States imposes income tax filing requirements on all "U.S. persons" and certain foreign persons, including certain foreign

trusts with U.S. owners or other U.S. nexus. For purposes of U.S. federal income tax and reporting, IRC section 7701(a)(30) defines the term “U.S. person” to mean a citizen or resident of the U.S., a domestic partnership, a domestic corporation, any estate other than a foreign estate and certain trusts. Section 7701(a)(31) defines the term “foreign trust” broadly to mean any trust other than a trust treated as a U.S. person.

A trust is defined as a “United States person” if (1) a court within the United States is able to exercise primary supervision over the administration of the trust (the “court test”), and (2) one or more United States persons have the authority to control all substantial decisions of the trust (the “control test”). IRC § 7701(a)(30)(e). A trust which satisfies both the “court test” and the “control test” is treated as a U.S. person for purposes of U.S. federal income tax and reporting. A trust that is not a U.S. person is treated as a foreign trust. IRC § 7701(a)(31).

A trust that is a U.S. person simply files Form 1041, U.S. Income Tax Return for Estates and Trusts. A foreign trust is treated for tax purposes just like a nonresident alien and is required to file a Form 1040NR, U.S. Nonresident Alien Income Tax Return, to report its income from sources within the U.S. and income that is effectively connected with a U.S. trade or business. See Instructions for Form 1040NR; Instructions for Form 1041.

Treasury regulation section 1.6012-1(b)(2)(ii) provides for a “dual-status” tax year for nonresident aliens that become U.S. citizens or residents during the tax year, or U.S. citizens and residents that abandon their citizenship (and thus become nonresident aliens) during the tax year. Individuals that are U.S. citizens or residents on the last day of the tax year must file Form 1040 and enter “Dual-Status Return” across the top, and attach a statement (usually Form 1040NR) showing their income for the part of the year that they were a nonresident alien. Individuals that are nonresident aliens on the last day of the tax year must file Form 1040NR, enter “Dual-Status Return” across the top, and attach a statement (usually Form 1040) showing income for the part of the year that the individual was a U.S. citizen or resident. See *also* Pub 519; Instructions for Form 1040NR.

Because a U.S. trust is treated as a U.S. person, and a foreign trust is treated as a nonresident alien for tax purposes, the dual-status tax year treatment would apply here as well. The only caveat, of course, is that a Form 1041 should be filed in lieu of Form 1040. Accordingly, a foreign trust that converts to a U.S. trust should file a Form 1041 and should attach a statement (Form 1040NR) as a schedule showing income for the portion of the year that it was a foreign trust. A U.S. trust that converts to a foreign trust should file Form 1040NR and attach a statement (Form 1041) as a schedule showing income for the portion of the year that it was a U.S. trust.

If you have any questions, please do not hesitate to ask.

Regards,