

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-105981-99
Date:

July 27, 1999

LEGEND

- Corp X =
- Corp Y =
- Corp Z =
- Date A =
- Date B =
- Date C =
- CPA Firm =

Dear :

This replies to a letter dated March 15, 1999, requesting a ruling under Treas. Reg. § 301.9100-3 for an extension of time to file with the Internal Revenue Service the statement required by §§ 1.897-2 and 1.1445-2 certifying that an interest in Corp X was not a "U.S. real property interest" as defined under § 897 on or 30 days before Date A. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations

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submitted by the 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.

Corp Y was a U.S. corporation. Corp Z is a foreign corporation and owned all of the stock of Corp Y.

In a series of transactions that is stated as qualifying as a reorganization under § 368(a)(1)(F) ("F" reorganization), Corp Z exchanged all of its Corp Y stock for Corp X stock. Prior to the "F" reorganization, Corp Y had determined that it had not been a U.S. real property holding corporation under § 897.

CPA Firm was responsible for all Federal tax aspects relating to the "F" reorganization, including all applicable statements and notices, and Corp Y and Corp X relied upon CPA Firm to satisfy all statement and notice requirements. As a result, CPA Firm prepared, in draft form, the statement for Corp Y to send to Corp Z indicating that it was not a U.S. real property holding corporation. In addition, CPA Firm prepared, in draft form, the notice for Corp Y to send to the IRS indicating that the stock of Corp Y was not a U.S. real property interest. On Date B, these documents were delivered to Corp Y. At that time, CPA Firm was not aware that Corp Z had already transferred its Corp Y shares to Corp X on Date A. The actual share transfer was handled by Corp Y's outside counsel and there was a lack of coordination between CPA Firm, outside counsel, and the taxpayers on this matter. Because of the inadvertent failure to comply with the statement and notice requirements, withholding tax was due under § 1445 on Date C.

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

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§ 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.

Based on the facts and circumstances of this case, we conclude that the standards of § 301.9100-3(a) have been satisfied. Accordingly, Corp X is granted an extension of time until 30 days from the date of this ruling letter to file with the Internal Revenue Service the statement required by §§ 1.897-2 and 1.1445-2 certifying that an interest in Corp Y was not a “U.S. real property interest” as defined under § 897 on or 30 days before Date A.

No opinion is expressed as to whether the “F” reorganization qualified as a reorganization within the meaning of I.R.C. §368(a)(1)(F).

This ruling is directed only to the taxpayer who requested it. I.R.C. §6110(j)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)