

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:BR1:PLR-113433-98

Date:

November 30, 1998

In re:

LEGEND

Individual A =

Individual B =

Foreign Country =

State Y =

Dear

This replies to your letter dated June 26, 1998, requesting that Individual A be granted an extension of time under Treas. Reg. § 301.9100-3 to submit a ruling request provided by I.R.C. § 877(c) and Section IV of Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, I.R.B. 1998-27, 30. Additional information was submitted on September 30, 1998. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Individual A and accompanied by a penalty of perjury statement executed by Individual A. 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.

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Individual A is a citizen by birth of Foreign Country and moved from the United States to Foreign Country in April 1995. On October 5, 1995, Individual A relinquished his “green card”, which he had held for 41 years.

In January 1997, while on vacation in State Y, Individual A attended a seminar presented by Individual B on the taxation of non-resident aliens. Individual A became concerned about the discussion of the new § 877 expatriation rules contained in the Health Insurance Portability and Accountability Act of 1996. After the seminar, Individual A discussed his concerns with Individual B a number of times. Individual B continued to be responsible for the resolution of Individual A’s concerns about § 877 after Individual A returned to Foreign Country in the spring of 1997. Individual B states that he was aware that a “green card” holder would be exempted by regulation from the new legislation but that he did not see Notice 97-19 until after the July 8, 1997 deadline to file a request for a ruling provided by Notice 97-19. Therefore, Individual B was unable to advise Individual A of the deadline.

Notice 97-19 provides that an individual subject to new § 877 who expatriated after February 5, 1994, but on or before July 8, 1996, and who wishes to submit a ruling request as to whether such expatriation had for one of its principal purposes the avoidance of U.S. taxes must do so by July 8, 1997.

Individual A relinquished his “green card” on October 5, 1995, which was after February 5, 1994, and before July 8, 1996. However, Individual A did not submit his ruling request before July 8, 1997 because Individual B failed to inform him of the July 8, 1997 deadline. Thus, Individual A is requesting relief to submit a ruling request after the due date set by Notice 97-19.

Treas. Reg. § 301.9100-3 provides rules for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute. A regulatory election means an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice or announcement. § 301.9100-1(b).

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 paragraph (e) of § 301.9100-3) 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) provides that, subject to § 301.9100-3(b)(3)(i) through

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(iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer--
(v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In the present situation, Section IV of Notice 97-19 fixes the time for an individual to submit a ruling request for a determination as to whether such expatriation had for one of its principal purposes the avoidance of U.S. taxes. Therefore, the Commissioner has discretionary authority pursuant to § 301.9100-3 to grant Individual A an extension of time, provided that Individual A 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 Individual A acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Accordingly, Individual A is granted an extension of time under § 301.9100-3 until 30 days from the date of this ruling letter to submit a ruling request provided by Section IV of Notice 97-19 as modified by Notice 98-34. Individual A should submit the information required by Section III of Notice 98-34 (Content of ruling request submission) when submitting a request under § 877(c).

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.

A copy of this ruling letter should be associated with the ruling request to be filed pursuant to Section IV of Notice 97-19 as modified by Notice 98-34.

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.

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

Sincerely,

Associate Chief Counsel
(International)

By: _____
Allen Goldstein
Reviewer