

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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[Third Party Communication:
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-136047-05

Date:
December 08, 2005

LEGEND

Taxpayer =

DC1 =

DC2 =

Date A =

Date B =

Date C =

Individual =

A

Individual =

B

Dear :

This replies to your representative’s letter dated Date C in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 to file the notice required by Treas. Reg. §1.897-2(h)(2) (the “Notice”) with the Internal Revenue Service (“IRS”) that was to have been sent no later than 30 days after Date A. The information submitted is substantially as set forth below.

Taxpayer is a domestic corporation. A number of foreign persons held an interest in Taxpayer prior to a merger transaction on Date A. DC1 and DC2 are domestic corporations, and DC2 is wholly owned by DC1.

On Date A, DC2 merged with and into Taxpayer, with Taxpayer surviving. As part of the merger, Taxpayer redeemed all of its outstanding shares for cash obtained from DC2 in the merger. The cash had been contributed to DC2 by DC1. Immediately following the merger, DC1 owned all of the stock of Taxpayer.

The merger agreement provided as a condition to closing the transaction that Taxpayer deliver to DC1 a duly executed certificate stating that an interest in Taxpayer was not a United States real property interest within the meaning of I.R.C. §897 as described in Treas. Reg. §§ 1.897-2(h) and 1.1445-2(c)(3) (“FIRPTA certificate”), together with the Notice to be filed pursuant to Treas. Reg. §1.897-2(h)(2).

On the date of the merger, Taxpayer delivered a properly executed FIRPTA certificate attesting that its stock was not a United States real property interest. At the same time, Taxpayer also provided the Notice that is required to be filed with the IRS under Treas. Reg. §1.897-2(h)(2) whenever a domestic corporation certifies that it is not a U.S. real property corporation under I.R.C. §897(c). As provided in Treas. Reg. §1.897-2(h)(2), the Notice must have been mailed to the IRS within 30 days after the FIRPTA certificate had been delivered to DC1. Here, because the FIRPTA certificate was delivered to DC1 on Date A, the Notice would have had to be mailed to the IRS by Date B.

Following the merger, neither Taxpayer nor DC1 mailed the Notice to the IRS as required. Individual A was an officer of Taxpayer at the time of the merger. Individual A, in an affidavit, acknowledges that she was aware that the Notice had to be mailed to the IRS within 30 days of delivering the FIRPTA certificate to DC1. However, Individual A believed that DC1 would file the Notice with the IRS.

Individual B was an officer of DC1 at the time of the merger. Individual B, in an affidavit, acknowledges that he was aware that the Notice had to be filed with the IRS but believed that Taxpayer would file the Notice. Consequently, the Notice was not filed and Taxpayer did not comply with the requirements of Treas. Reg. §1.897-2(h)(2).

Taxpayer discovered the failure to file the Notice less than two months after the deadline for filing the Notice with the IRS and promptly took steps to cure the failure, including the submission of this letter ruling request.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §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) provides that an election includes an application for relief in respect of tax, and 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(a) provides that requests for relief subject to this section will be granted when the taxpayer provides evidence (including affidavits described in

Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith within the meaning of Treas. Reg. §301.9100-3(b), subject to the conditions set forth in Treas. Reg. §301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of Treas. Reg. §301.9100-3(c).

In the present situation, the Notice falls within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. §301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief as set forth in Treas. Reg. §301.9100-3(a).

Based on the facts and representations submitted, we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter ruling to file the Notice with the IRS as required by Treas. Reg. §1.897-2(h)(2).

The ruling contained in this letter is predicated upon facts and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. 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.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the Notice. Treas. Reg. §301.9100-1(a).

Failure to mail the Notice (including a copy of the FIRPTA certificate DC1 obtained from Taxpayer under Treas. Reg. §1.897-2(g)(1)(i)(A)) to the IRS within the time period set forth in Treas. Reg. §1.897-2(h)(2)(v) will cause the statement provided pursuant to Treas. Reg. §1.897-2(h)(1)(i) to become an invalid statement. Treas. Reg. §1.897-2(h)(2)(v).

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

A copy of this ruling letter should be associated with copies of the FIRPTA certificate and the Notice mailed to the IRS.

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 furnished to your authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Thomas D. Beem

Thomas D. Beem

Senior Technical Reviewer

Office of the Associate Chief Counsel (International)

Enclosure:

Copy for 6110 purposes

Cc: