

Add Another Exception To Disregarded Entity Treatment

Saturday, December 10, 2011

The Treasury Department greatly simplified tax planning and compliance with the check-the-box regulations. One aspect of those regulations is that certain single-owner entities (either by default or via the check-the-box election) are entirely disregarded for all federal tax purposes.

Or that is how it started. As time has progressed, so have the number of exceptions to disregarded status that have been promulgated. Making the job of tax professionals more difficult, there is no centralized list of the exceptions to disregarded entity treatment. Instead, they are scattered in various regulations, creating traps for unwary taxpayers and planners. Planners would be well-served by maintaining their own cheat sheet of exceptions to these rules to make sure that a particular transaction is not covered by an exception.

A new exception now has been added to the list. Under final regulations issued under Section 881, the IRS can treat a disregarded entity in a financing structure as a person separate from its owner (that is, as a non-disregarded entity), in determining whether a financing arrangement exists that should be recharacterized under the multiple-party financing rules of Code §7701(l) and Treas. Regs. §1.881-3. These rules allow the IRS to disregard the participation of one or more intermediate entities in a financing arrangement and recharacterize the financing arrangement as a transaction directly between other parties. It will often be applied where intermediate entities are employed by taxpayers to obtain treaty or other tax benefits that would not be available if a financing transaction was directly conducted between the ultimate lender and borrower.

T.D. 9562, 12/08/2011; Reg. § 1.881-3

Authored by Charles Rubin, Esq. Mr. Rubin is a Florida Bar Board Certified tax attorney with the firm of Gutter Chaves Josepher Rubin Forman Fleisher P.A. (www.floridatx.com) His practice focuses on protecting & enhancing individual, family & business wealth through: Planning to Minimize Taxes (U.S. & International) • Estate Planning, Charitable, Marital & Succession Planning • Business Structuring & Transactions • Trusts & Estates (Administration-Disputes-Drafting) • Creditor Protection. He can be reached at 561-998-7847 or at crubin@floridatx.com. This article was previously published at <http://www.rubinontax.blogspot.com>.