

to carryovers) are creditable foreign taxes (as defined in section 904(j)(3)(B)).

(b) *Coordination with carryover rules*—(1) *No carryovers to or from election year.* If the taxpayer elects to apply section 904(j) for any taxable year, then no taxes paid or accrued by the taxpayer during such taxable year may be deemed paid or accrued under section 904(c) in any other taxable year, and no taxes paid or accrued in any other taxable year may be deemed paid or accrued under section 904(c) in such taxable year.

(2) *Carryovers to and from other years determined without regard to election years.* The amount of the foreign taxes paid or accrued, and the amount of the foreign source taxable income, in any year for which the taxpayer elects to apply section 904(j) shall not be taken into account in determining the amount of any carryover to or from any other taxable year. However, an election to apply section 904(j) to any year does not extend the number of taxable years to which unused foreign taxes may be carried under section 904(c) and § 1.904-2(b). Therefore, in determining the number of such carryover years, the taxpayer must take into account years to which a section 904(j) election applies.

(3) *Determination of amount of creditable foreign taxes.* Otherwise allowable carryovers of foreign tax credits from other taxable years shall not be taken into account in determining whether the amount of creditable foreign taxes paid or accrued by an individual during a taxable year exceeds \$300 (\$600 in the case of a joint return) for purposes of section 904(j)(2)(B).

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. In 2006, X, a single individual using the cash basis method of accounting for income and foreign tax credits, pays \$100 of foreign taxes with respect to general limitation income that was earned and included in income for United States tax purposes in 2005. The foreign taxes would be creditable under section 901 but are not shown on a payee statement furnished to X. X's only income for 2006 from sources outside the United States is qualified passive income, with respect to which X pays \$200 of creditable foreign taxes shown on a payee statement. X may not elect to apply section 904(j) for 2006 because some of X's foreign taxes are not creditable foreign taxes within the meaning of section 904(j)(3)(B).

Example 2. (i) In 2009, A, a single individual using the cash basis method of accounting for income and foreign tax credits, pays creditable foreign taxes of \$250 attributable to passive income. Under section 904(c), A may also carry forward to 2009 \$100 of unused foreign taxes paid in 2005 with respect to passive income, \$300 of unused foreign taxes paid in 2005 with

respect to general limitation income, \$400 of unused foreign taxes paid in 2006 with respect to passive income, and \$200 of unused foreign taxes paid in 2006 with respect to general limitation income. In 2009, A's only foreign source income is passive income described in section 904(j)(3)(A)(i), and this income is reported to A on a payee statement (within the meaning of section 6724(d)(2)). If A elects to apply section 904(j) for the 2009 taxable year, the unused foreign taxes paid in 2005 and 2006 are not deemed paid in 2009, and A therefore cannot claim a foreign tax credit for those taxes in 2009.

(ii) In 2010, A again is eligible for and elects the application of section 904(j). The carryforwards from 2005 expire in 2010. The carryforward period established under section 904(c) is not extended by A's election under section 904(j). In 2011, A does not elect the application of section 904(j). The \$600 of unused foreign taxes paid in 2006 on passive and general limitation income are deemed paid in 2011, under section 904(c), without any adjustment for any portion of those taxes that might have been used as a foreign tax credit in 2009 or 2010 if A had not elected to apply section 904(j) to those years.

(d) *Effective date.* Section 1.904(j)-1 applies to taxable years beginning after July 20, 2004.

■ **Par. 10.** Section 1.954-2 is amended by:

■ 1. Revising paragraph (b)(2)(iv), *Example 2.*

■ 2. Removing paragraph (b)(2)(iv), *Example 3.*

The revision reads as follows:

§ 1.954-2 Foreign personal holding company income.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

Example 2. (i) DS, a domestic corporation, wholly owns two controlled foreign corporations organized in Country A, CFC1 and CFC2. CFC1 purchases from DS property that DS manufactures in the United States. CFC1 uses the purchased property as a component part of property that CFC1 manufactures in Country A within the meaning of § 1.954-3(a)(4). CFC2 provides loans described in section 864(d)(6) to unrelated persons in Country A for the purchase of the property that CFC1 manufactures in Country A.

(ii) The interest accrued from the loans by CFC2 is not export financing interest as defined in section 904(d)(2)(G) because the property sold by CFC1 is not manufactured in the United States under § 1.927(a)-1T(c). No portion of the interest is export financing interest as defined in this paragraph (b)(2). The full amount of the interest is, therefore, included in foreign personal holding

company income under paragraph (b)(1)(ii) of this section.

* * * * *

Mark E. Matthews,

Deputy Commissioner of Services and Enforcement.

Approved: June 16, 2004.

Gregory F. Jenner,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 04-16374 Filed 7-19-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9139]

RIN 1545-BD24

Deemed Election To Be an Association Taxable as a Corporation for a Qualified Electing S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulation.

SUMMARY: This document contains a temporary regulation that deems certain eligible entities that file timely S corporation elections to have elected to be classified as associations taxable as corporations. This regulation affects certain eligible entities filing timely elections to be S corporations on or after July 20, 2004. The text of this temporary regulation also serves as the text of the proposed regulations set forth in a notice of proposed rulemaking (REG-131786-03) on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 20, 2004.

FOR FURTHER INFORMATION CONTACT: Rebekah A. Myers, (202) 622-3050 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

Section 301.7701-3(a) provides that an eligible entity with two or more owners may elect to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner may elect to be classified as an association or to be disregarded as an entity separate from its owner. Section 301.7701-3(b) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more owners or is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c) describes the time and place for filing an entity classification election. Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified as other than its default classification or to change its classification by filing Form 8832, "Entity Classification Election", with the service center designated on the form.

A taxpayer whose default classification is a partnership or a disregarded entity may seek to be classified as an S corporation. In these cases, the taxpayer must elect to be classified as an association under § 301.7701-3(c)(1)(i) by filing Form 8832 and must elect to be an S corporation under section 1362(a) by filing Form 2553, "Election by a Small Business Corporation." In some cases, an entity may timely file the Form 2553 but fail to file the Form 8832. The entity must then submit a letter ruling request for an extension of time under § 301.9100 to file a late entity classification election. The temporary regulation provides relief for these entities. In other cases, the Form 2553 and the Form 8832 are filed late, and the entity must submit a ruling request under § 301.9100 to file a late entity classification election and under section 1362(b)(5) to file a late S corporation election. Rev. Proc. 2004-48, I.R.B. 2004-32, provides relief for these entities.

Explanation of Provisions

Requiring eligible entities to file two elections in order to be classified as S corporations creates a burden on those entities and on the Internal Revenue Service (IRS). The temporary regulation simplifies these paperwork requirements by eliminating, in certain cases, the requirement that the entity elect to be classified as an association. Instead, an eligible entity that makes a timely and valid election to be classified as an S corporation will be deemed to have elected to be classified as an association taxable as a corporation.

The temporary regulation amends § 301.7701-3(c)(1)(v) to provide that, if an eligible entity makes a timely and valid election to be an S corporation under section 1362(a)(1), it is treated as having made an election to be classified as an association under § 301.7701-3. However, if the eligible entity's election is not timely and valid, the default classification rules provided in § 301.7701-3(b) will apply to the entity unless the Service provides late S corporation election relief or inadvertent invalid election relief. If the late or invalid election is not perfected, the default rules will maintain the

passthrough taxation treatment by classifying the entity as a partnership or a disregarded entity.

Effective Date

The regulations apply to elections to be an S corporation filed on or after July 20, 2004. However, eligible entities that timely filed S elections before July 20, 2004, may also rely on the provisions of the regulation.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the preamble to the Notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this regulation is Rebekah A. Myers, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate and excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7701-3 is amended by adding paragraphs (c)(1)(v)(C) and (h)(3) to read as follows:

§ 301.7701-3 Classification of certain business entities.

(c) * * *

(1) * * *

(v) * * *

(C) *S corporations.* [Reserved] For further guidance, see § 301.7701-3T(c)(1)(v)(C).

* * * * *

(h) * * *

(3) *Deemed elections for S corporations.* [Reserved] For further guidance, see § 301.7701-3T(h)(3).

■ **Par. 3.** Section 301.7701-3T is revised to read as follows:

§ 301.7701-3T Classification of certain business entities (temporary).

(a) through (c)(1)(v)(B) [Reserved] For further guidance, see § 301.7701-3(a) through (c)(1)(v)(B).

(c)(1)(v) (C) *S corporations.* An eligible entity that timely elects to be an S corporation under section 1362(a)(1) is treated as having made an election under this section to be classified as an association, provided that (as of the effective date of the election under section 1362(a)(1)) the entity meets all other requirements to qualify as a small business corporation under section 1361(b). Subject to § 301.7701-3(c)(1)(iv), the deemed election to be classified as an association will apply as of the effective date of the S corporation election and will remain in effect until the entity makes a valid election, under § 301.7701-3(c)(1)(i), to be classified as other than an association.

(c)(2) through (h)(2)(iii) [Reserved] For further guidance, see § 301.7701-3(c)(2) through (h)(2)(iii).

(3) *Deemed elections for S corporations.* Paragraph (c)(1)(v)(C) of this section applies to timely S corporation elections under section 1362(a) filed on or after July 20, 2004. Eligible entities that filed timely S elections before July 20, 2004, may also rely on the provisions of the regulation.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 6, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 04-16232 Filed 7-19-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 61

[DoD Directive 6000.6]

Medical Malpractice Claims Against Military and Civilian Personnel of the Armed Forces

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes information in Title 32 of the Code of Federal Regulations concerning Medical Malpractice Claims Against Military and Civilian Personnel of the Armed Forces. This part has served the purpose for