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Prop. Reg. Section 1.761-2

Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code

(a)

(4)

(iv) Termination upon change in interest.

(A) In general. Except as provided in paragraph (a)(4)(iv)(E) of this section, an election under this paragraph (a) by a specified applicable unincorporated organization (as defined in paragraph (a)(4)(iv)(C) of this section) will terminate as the result of a terminating transaction (as defined in paragraph (a)(4)(iv)(D) of this section) involving an interest in that organization. Such termination will be effective beginning on the first day of the taxable year beginning after the hypothetical partnership taxable year (as defined in paragraph (a)(4)(iv)(B) of this section) in which the terminating transaction occurred.

(B) Hypothetical partnership taxable year. The term hypothetical partnership taxable year means, with respect to a specified applicable unincorporated organization, the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the election under this paragraph (a), the organization continued to have taxable years and such taxable years were determined by reference to the taxable year required to be used by the organization to make the election.

(C) Specified applicable unincorporated organization. The term specified applicable unincorporated organization means an applicable unincorporated organization that has made an election under this paragraph (a) and such election would not be valid without the application of either paragraph (a)(4)(iii)(A) or (B) of this section.

(D) Terminating transaction. The term terminating transaction means an acquisition or disposition of an interest in a specified applicable unincorporated organization (including transfers among members of the organization), other than as the result of a transfer between a disregarded entity (as defined in §1.6417-1(f)) and its owner.

(E) Exception. If a specified applicable unincorporated organization meets the requirements to make a new election under this paragraph (a) and makes such an election no later than the time that would have been prescribed by §1.6031(a)-1(e) (including extensions thereof) for filing a partnership return with respect to the hypothetical partnership taxable year in which one or more terminating transactions occurred, the organization's election will not terminate under paragraph (a)(4)(iv)(A) of this section as a result of any terminating transaction occurring during that hypothetical partnership taxable year. Such election must contain, in addition to the information required by

paragraph (b) of this section, information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred.

(5)

(iv)

Example (4).

(A) Facts. The facts are the same as in paragraph (a)(5)(ii)(A) of this section (Example 2), except that T owns a 60% interest in TLLC and Y owns a 40% interest in TLLC. TLLC's first taxable year ends on September 30th of year 1. On or before the 15th day of the third month following that date, TLLC makes a valid election under section 761(a) with respect to year 1. On August 31 of year 3, T sells all of T's interest in TLLC to Q. (B) Analysis. TLLC is a specified applicable unincorporated organization. Accordingly, the sale of T's interest is a terminating transaction and will terminate TLLC's section 761(a) election unless TLLC makes a new section 761(a) election on or before the 15th day of the third month following September 30th of year 3. This analysis would not be different if, sometime between the end of TLLC's first taxable year and the hypothetical partnership taxable year ending on September 30th of year 3, TLLC's taxable year would have changed under the rules of subchapter K (for example, as a result of a change in T's taxable year).

(b)

(2)

(i)

Such partnership return must contain the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained); and all information required by the form and instructions to the Form 1065 for an election under paragraph (a) of this section.

(ii)

If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (but not a specified applicable unincorporated organization) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to

secure exclusion from all of subchapter K beginning with the first taxable year of the organization.

(3)

(i)

Application for permission to revoke the election must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024-1 or successor guidance.

(f)Applicability date.

(1)In general. Except as provided in paragraphs (d) and (f)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2)Exceptions. Paragraphs (a)(4)(iv) and (a)(5)(iv) of this section, the fifth sentence of paragraph (b)(2)(i) of this section, the first sentence of paragraph (b)(2)(ii) of this section, and the last sentence of paragraph (b)(3)(i) of this section, apply to taxable years ending on or after November 20, 2024.