

Internal Revenue Service, Treasury

§ 301.7701-1

the Armed Forces described in paragraph (a)(2) of this section shall be taken into account in determining the amount required to be covered into the treasury of Guam under paragraph (b)(1)(ii) of this section. For purposes of this paragraph, the term "Armed Forces of the United States" has the meaning provided by §301.7701-8 of this chapter. This paragraph does not apply to wages for services performed in Guam by members of the Armed Forces of the United States which are not compensation for military or naval service. In determining the amount of tax to be covered into the treasury of Guam under this paragraph with respect to remuneration for services performed in Guam by members of the Armed Forces of the United States, the special procedure agreed upon with the Department of Defense in 1951 shall not apply to remuneration paid after December 31, 1974. Under that procedure the tax withheld under section 3402 upon such remuneration for services performed in Guam during April and October of each year was to be projected for the appropriate six-month period of which the base month is a part, thereby arriving at an estimated figure for semiannual withholding tax to be covered over.

(f) *Transfers of funds.* The transfers of funds between the United States and Guam required to effectuate the provisions of this section shall be made when convenient for the two governments, but not less frequently than once in each calendar year. In complying with paragraph (b) of this section, only net balances will be transferred between the two governments. Further, amounts transferred pursuant to paragraph (b) of this section may be determined on the basis of estimates rather than the actual amounts derived from information furnished by taxpayers, except that the net collections for 1973 and every third calendar year thereafter are to be transferred on the basis of the information furnished by taxpayers pursuant to paragraph (d) of this section. In order to facilitate the transfer of funds pursuant to this section, the Commissioner of Internal Revenue and the Commissioner of Revenue and Taxation of Guam shall exchange such information, including

copies of income tax returns, as will ensure that the provisions of section 7654 and this section are being properly implemented.

[T.D. 7385, 40 FR 50265, Oct. 29, 1975]

Definitions

§ 301.7701-1 Classification of organizations for federal tax purposes.

(a) *Organizations for federal tax purposes—(1) In general.* The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes.* A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized.* An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it

§ 301.7701-2

is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations.* Under §§ 301.7701-2 and 301.7701-3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations.* The classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization. For the classification of organizations as trusts, see § 301.7701-4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701-2 and 301.7701-3 provide rules for classifying organizations that are not classified as trusts.

(c) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482-7 of this chapter and any arrangement that is treated by the Commissioner as a qualified cost sharing arrangement under § 1.482-7 of this chapter is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482-7 of this chapter for the proper treatment of qualified cost sharing arrangements.

(d) *Domestic and foreign entities.* For purposes of this section and §§ 301.7701-2 and 301.7701-3, an entity is a domestic entity if it is created or organized in the United States or under the law of the United States or of any State; an entity is foreign if it is not domestic. See sections 7701(a)(4) and (a)(5).

(e) *State.* For purposes of this section and § 301.7701-2, the term *State* includes the District of Columbia.

(f) *Effective date.* The rules of this section are effective as of January 1, 1997.

[T.D. 8697, 61 FR 66588, Dec. 18, 1996]

26 CFR Ch. I (4-1-02 Edition)

§ 301.7701-2 Business entities; definitions.

(a) *Business entities.* For purposes of this section and § 301.7701-3, a *business entity* is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

(b) *Corporations.* For federal tax purposes, the term *corporation* means—

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under § 301.7701-3);

(3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association;

(4) An insurance company;

(5) A State-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.*, or a similar federal statute;

(6) A business entity wholly owned by a State or any political subdivision thereof;

(7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and

(8) *Certain foreign entities*—(i) *In general.* Except as provided in paragraphs (b)(8)(ii) and (d) of this section, the following business entities formed in the following jurisdictions:

American Samoa, Corporation
Argentina, Sociedad Anonima
Australia, Public Limited Company