value method, effective for the current taxable year. For purposes of determining the tax book value of its section 168 property, the taxpayer's depreciation deduction is determined by applying the method, convention, and recovery period rules of the alternative depreciation system under section 168(g)(2) as in effect in 2005 to the taxpayer's original cost basis in such property. In 2006, the taxpayer acquires and places in service in the United States new section 168 property. The tax book value of this section 168 property is determined under the rules of section 168(g)(2) applicable to property placed in service in 2006.

Example 2. Assume the same facts as in *Example 1*, except that the taxpayer revokes the alternative tax book value method election effective for taxable year 2010. Additionally, in 2011, the taxpayer acquires new section 168 property and places it in service in the United States. If the taxpayer elects to use the alternative tax book value method effective for taxable year 2012, the taxpayer must determine the tax book value of its section 168 property as though the prior election still applied. Thus, the tax book value of property placed in service prior to 2005 would be determined by applying the method, convention, and recovery period rules of the alternative depreciation system under section 168(g)(2) applicable to property placed in service in 2005. The tax book value of section 168 property placed in service during any taxable year after 2004 would be determined by applying the method, convention, and recovery period rules of the alternative depreciation system under section 168(g)(2) applicable to property placed in service in such taxable year.

(2) *Timing and scope of election.* (i) Except as provided in this paragraph (i)(2), a taxpayer may elect to use the alternative tax book value method with respect to any taxable year beginning on or after March 26, 2004. However, pursuant to § 1.861–8T(c)(2), a taxpayer that has elected the fair market value method must obtain the consent of the Commissioner prior to electing the alternative tax book value method. Any election made pursuant to this paragraph (i)(2) shall apply to all members of an affiliated group of corporations as defined in §§ 1.861–11(d) and 1.861–11T(d). Any election made pursuant to this paragraph (i)(2) shall apply to all subsequent taxable years of the taxpayer unless revoked by the taxpayer. Revocation of such an election, other than in conjunction with an election to use the fair market value method, for a taxable year prior to the sixth taxable year for which the election applies requires the consent of the Commissioner.

(ii) *Example.* The provisions of this paragraph (i)(2) are illustrated in the following example:

Example. Corporation X, a calendar year taxpayer, elects on its original, timely filed tax return for the taxable year ending December 31, 2007, to use the alternative tax book value method for its 2007 year. The alternative tax book value method applies to Corporation X's 2007 year and all subsequent taxable years. Corporation X may not, without the consent of the Commissioner, revoke its election and determine tax book value using a method other than the alternative tax book value method with respect to any taxable year beginning before January 1, 2012. However, Corporation X may automatically elect to change from the alternative tax book value method to the fair market value method for any open year.

(3) *Certain other adjustments.* [Reserved.]

(4) *Effective date.* This paragraph (i) applies to taxable years beginning on or after March 26, 2004.

(j) [Reserved]. For further guidance, see § 1.861–9T(j).

■ **Par. 3.** Section 1.861–9T is amended as follows:

■ 1. Revise the second sentence in paragraph (g)(1)(ii) introductory text.

■ 2. Revise paragraph (i).

The revisions read as follows:

§ 1.861–9T Allocation and apportionment of interest expense (temporary).

* * * * *

(g) * * *

(1) * * *

(ii) * * * For rules concerning the application of an alternative method of valuing assets for purposes of the tax book value method, see § 1.861–9(i).

* * *

* * * * *

(i) [Reserved]. For further guidance, see § 1.861–9(i).

* * * * *

Approved: January 20, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–766 Filed 1–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9246]

RIN 1545–BD37

Clarification of Definitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations defining the terms *corporation* and *domestic* in circumstances in which a business entity is created or organized in more than one jurisdiction. These regulations affect business entities that are created or organized under the laws of more than one jurisdiction.

DATES: *Effective Date:* These regulations are effective January 30, 2006.

Applicability Dates: For the dates of applicability of these regulations, see §§ 301.7701–2(e)(3) and 301.7701–5(c).

FOR FURTHER INFORMATION CONTACT: Thomas Beem, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2004, the IRS and Treasury issued temporary regulations (TD 9153), 69 FR 49809, and a notice of proposed rulemaking (REG–124872–04), 69 FR 49840, regarding the classification of business entities that are created or organized under the laws of more than one jurisdiction (*dually chartered entities*).

Under the provisions of the temporary and proposed regulations, classification of a dually chartered entity involves two independent determinations: (1) Whether the entity is a corporation; and (2) whether the entity is domestic or foreign. The entity is a corporation under § 301.7701–2T(b)(9) if its form of organization in any one of the jurisdictions in which it is created or organized would cause it to be treated as a corporation under § 301.7701–2(b). The entity is domestic under § 301.7701–5T if it is organized as any kind of entity in the United States or under the law of the United States or of any State. The temporary regulations were effective for all entities existing on or after August 12, 2004.

The public hearing concerning the proposed regulations was canceled because no requests to speak were received. However, the IRS and Treasury received several written comments on the temporary and proposed regulations, which are discussed below.

Explanation of Provisions

A. Dates of Application

The preamble to the temporary and proposed regulations notes that the IRS and Treasury consider the regulations to be a clarification of the entity classification rules as they existed prior to the issuance of the temporary and proposed regulations (*pre-existing regulations*). This belief is based on the view that, even absent these regulations, a proper application of the pre-existing regulations produces the same result as

the rules of the temporary and proposed regulations. Some commentators suggest that this discussion in the preamble to the temporary and proposed regulations indicates that the regulations apply prior to August 12, 2004, and thus the rules are retroactive in their effect.

Also, all of the commentators note that while the temporary and proposed rules are a reasonable interpretation of the statute and the pre-existing regulations, other reasonable interpretations of the pre-existing regulations are also possible and that some taxpayers classified their dually chartered entities under those other interpretations. Therefore, the commentators question whether it is appropriate to view the temporary and proposed regulations as a clarification of the existing regulations. Further, the commentators state that where taxpayers have reasonably relied on an alternative interpretation of the existing regulations, the immediate application of the temporary regulations cause an unexpected change in the classification of those taxpayers' dually chartered entities, often with adverse tax consequences. Moreover, the commentators point out that the tax costs of converting a dually chartered entity from this unexpected classification to the taxpayer's desired classification could be significant and could, in some instances, effectively prevent the taxpayer from undertaking the conversion. For these reasons, all the commentators object to the effective date provisions of the temporary regulations and they request that the final regulations provide either a transition period before the rules take effect, or a rule that exempts dually chartered entities that were in existence on August 12, 2004, from the application of the rules.

Neither the temporary regulations nor these final regulations are retroactive. The earliest date that any entity is subject to these regulations is August 12, 2004. For periods prior to the date these final regulations apply (*i.e.*, prior to August 12, 2004), the classification of dually chartered entities is governed by the pre-existing regulations. Further, based upon the comments discussed above, but without any inference intended as to the proper interpretation of the pre-existing regulations, the IRS and Treasury conclude that, while the final regulations generally are effective as of August 12, 2004, a transition rule is appropriate. The transition rule provides that for dually chartered entities existing on August 12, 2004, the provisions of this final regulation apply as of May 1, 2006. The IRS and Treasury recognize that taxpayers eligible for the transition rule may have completed transactions after August 12, 2004, relying upon the temporary regulations and therefore these taxpayers may rely upon the final regulations as of August 12, 2004.

B. Effect on Dually Chartered Entities Not Organized Anywhere as Per Se Corporations

Several commentators state that it is unclear whether § 301.7701–2T(b)(9) applies in the case of a dually chartered entity not created or organized in any jurisdiction in a manner that would cause it to be treated as a *per se* corporation. A *per se* corporation is an entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8), and thus is not an eligible entity as defined in § 301.7701–3(a). A *per se* corporation is, therefore, ineligible to elect its classification.

Even though a dually chartered entity is not created or organized anywhere in a manner that would cause it to be classified as a *per se* corporation, it is still necessary to classify the entity. For example, a dually chartered entity may be organized in one jurisdiction in manner that would result in a default classification as a corporation and in another jurisdiction in a manner that would result in a default classification as a partnership. Absent an election, a rule is necessary to resolve the conflicting default classifications. Therefore, the regulation and examples have been modified to clarify that the rules apply even in circumstances in which the entity is not organized anywhere in a manner that would make it a *per se* corporation.

Several commentators state that even if a dually chartered entity is not created or organized in any jurisdiction as a *per se* corporation, § 301.7701–2T(b)(9) could be interpreted as making the entity a *per se* corporation in some circumstances and thus prohibiting the entity from electing its classification. According to these commentators, this occurs because the literal language of the regulation only considers an entity's default classification at the time of its formation and ignores any entity classification election under § 301.7701–3 that would otherwise apply to the entity at the time the entity classification determination is made. The regulations are not intended to operate in that manner. Therefore, a sentence is added to § 301.7701–2(b)(9) of the final regulations to clarify that a dually chartered entity that is an eligible entity in each jurisdiction in which it is created or organized will continue to be considered an eligible entity under § 301.7701–3(a). In addition, the examples were modified to illustrate this provision.

The proposed regulations under section 7701 are adopted as modified by this Treasury decision and the preceding temporary regulations are removed.

Special Analyses

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the temporary and proposed regulations that preceded these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of these regulations is Thomas Beem of the Office of Associate Chief Counsel (International). However, other personnel from IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

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**. In § 301.7701–1, paragraph (d) is revised to read as follows:

§ 301.7701–1 Classification of organizations for Federal tax purposes.

* * * * *

(d) *Domestic and foreign business entities.* See § 301.7701–5 for the rules that determine whether a business entity is domestic or foreign.

* * * * *

§ 301.7701–1T [Removed]

■ **Par. 3.** Section 301.7701–1T is removed.

■ **Par. 4.** In § 301.7701–2, paragraphs (b)(9) and (e)(3) are revised to read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b)(9) *Business entities with multiple charters.* (i) An entity created or organized under the laws of more than one jurisdiction if the rules of this section would treat it as a corporation with reference to any one of the jurisdictions in which it is created or organized. Such an entity may elect its classification under § 301.7701–3, subject to the limitations of those provisions, only if it is created or organized in each jurisdiction in a manner that meets the definition of an eligible entity in § 301.7701–3(a). The determination of a business entity's corporate or non-corporate classification is made independently from the determination of whether the entity is domestic or foreign. See § 301.7701–5 for the rules that determine whether a business entity is domestic or foreign.

(ii) *Examples.* The following examples illustrate the rule of this paragraph (b)(9):

Example 1. (i) *Facts.* X is an entity with a single owner organized under the laws of Country A as an entity that is listed in paragraph (b)(8)(i) of this section. Under the rules of this section, such an entity is a corporation for Federal tax purposes and under § 301.7701–3(a) is unable to elect its classification. Several years after its formation, X files a certificate of domestication in State B as a limited liability company (LLC). Under the laws of State B, X is considered to be created or organized in State B as an LLC upon the filing of the certificate of domestication and is therefore subject to the laws of State B. Under the rules of this section and § 301.7701–3, an LLC with a single owner organized only in State B is disregarded as an entity separate from its owner for Federal tax purposes (absent an election to be treated as an association). Neither Country A nor State B law requires X to terminate its charter in Country A as a result of the domestication, and in fact X does not terminate its Country A charter. Consequently, X is now organized in more than one jurisdiction.

(ii) *Result.* X remains organized under the laws of Country A as an entity that is listed in paragraph (b)(8)(i) of this section, and as such, it is an entity that is treated as a corporation under the rules of this section. Therefore, X is a corporation for Federal tax purposes because the rules of this section would treat X as a corporation with reference to one of the jurisdictions in which it is created or organized. Because X is organized in Country A in a manner that does not meet the definition of an eligible entity in § 301.7701–3(a), it is unable to elect its classification.

Example 2. (i) *Facts.* Y is an entity that is incorporated under the laws of State A and has two shareholders. Under the rules of this section, an entity incorporated under the laws of State A is a corporation for Federal tax purposes and under § 301.7701–3(a) is unable to elect its classification. Several years after its formation, Y files a certificate of continuance in Country B as an unlimited company. Under the laws of Country B, upon filing a certificate of continuance, Y is treated as organized in Country B. Under the rules of this section and § 301.7701–3, an unlimited company organized only in Country B that has more than one owner is treated as a partnership for Federal tax purposes (absent an election to be treated as an association). Neither State A nor Country B law requires Y to terminate its charter in State A as a result of the continuance, and in fact Y does not terminate its State A charter. Consequently, Y is now organized in more than one jurisdiction.

(ii) *Result.* Y remains organized in State A as a corporation, an entity that is treated as a corporation under the rules of this section. Therefore, Y is a corporation for Federal tax purposes because the rules of this section would treat Y as a corporation with reference to one of the jurisdictions in which it is created or organized. Because Y is organized in State A in a manner that does not meet the definition of an eligible entity in § 301.7701–3(a), it is unable to elect its classification.

Example 3. (i) *Facts.* Z is an entity that has more than one owner and that is recognized under the laws of Country A as an unlimited company organized in Country A. Z is organized in Country A in a manner that meets the definition of an eligible entity in § 301.7701–3(a). Under the rules of this section and § 301.7701–3, an unlimited company organized only in Country A with more than one owner is treated as a partnership for Federal tax purposes (absent an election to be treated as an association). At the time Z was formed, it was also organized as a private limited company under the laws of Country B. Z is organized in Country B in a manner that meets the definition of an eligible entity in § 301.7701–3(a). Under the rules of this section and § 301.7701–3, a private limited company organized only in Country B is treated as a corporation for Federal tax purposes (absent an election to be treated as a partnership). Thus, Z is organized in more than one jurisdiction. Z has not made any entity classification elections under § 301.7701–3.

(ii) *Result.* Z is organized in Country B as a private limited company, an entity that is treated (absent an election to the contrary) as a corporation under the rules of this section. However, because Z is organized in each jurisdiction in a manner that meets the definition of an eligible entity in § 301.7701–3(a), it may elect its classification under § 301.7701–3, subject to the limitations of those provisions.

Example 4. (i) *Facts.* P is an entity with more than one owner organized in Country A as a general partnership. Under the rules of this section and § 301.7701–3, an eligible entity with more than one owner in Country A is treated as a partnership for federal tax purposes (absent an election to be treated as an association). P files a certificate of continuance in Country B as an unlimited company. Under the rules of this section and § 301.7701–3, an unlimited company in Country B with more than one owner is treated as a partnership for federal tax purposes (absent an election to be treated as an association). P is not required under either the laws of Country A or Country B to terminate the general partnership in Country A, and in fact P does not terminate its Country A partnership. P is now organized in more than one jurisdiction. P has not made any entity classification elections under § 301.7701–3.

(ii) *Result.* P's organization in both Country A and Country B would result in P being classified as a partnership. Therefore, since the rules of this section would not treat P as a corporation with reference to any jurisdiction in which it is created or organized, it is not a corporation for federal tax purposes.

* * * * *

(e) * * *

(3)(i) *General rule.* Except as provided in paragraph (e)(3)(ii) of this section, the rules of paragraph (b)(9) of this section apply as of August 12, 2004, to all business entities existing on or after that date.

(ii) *Transition rule.* For business entities created or organized under the laws of more than one jurisdiction as of August 12, 2004, the rules of paragraph (b)(9) of this section apply as of May 1, 2006. These entities, however, may rely on the rules of paragraph (b)(9) of this section as of August 12, 2004.

* * * * *

§ 301.7701–2T [Removed]

■ **Par. 5.** Section 301.7701–2T is removed.

■ **Par. 6.** Section 301.7701–5 is revised to read as follows:

§ 301.7701–5 Domestic and foreign business entities.

(a) *Domestic and foreign business entities.* A business entity (including an entity that is disregarded as separate from its owner under § 301.7701–2(c)) is domestic if it is created or organized as any type of entity (including, but not limited to, a corporation, unincorporated association, general partnership, limited partnership, and limited liability company) in the United States, or under the law of the United States or of any State. Accordingly, a business entity that is created or organized both in the United States and in a foreign jurisdiction is a domestic entity. A business entity (including an entity that is disregarded as separate from its owner under § 301.7701–2(c)) is foreign if it is not domestic. The

determination of whether an entity is domestic or foreign is made independently from the determination of its corporate or non-corporate classification. See §§ 301.7701–2 and 301.7701–3 for the rules governing the classification of entities.

(b) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) *Facts.* Y is an entity that is created or organized under the laws of Country A as a public limited company. It is also an entity that is organized as a limited liability company (LLC) under the laws of State B. Y is classified as a corporation for Federal tax purposes under the rules of §§ 301.7701–2, and 301.7701–3.

(ii) *Result.* Y is a domestic corporation because it is an entity that is classified as a corporation and it is organized as an entity under the laws of State B.

Example 2. (i) *Facts.* P is an entity with more than one owner organized under the laws of Country A as an unlimited company. It is also an entity that is organized as a general partnership under the laws of State B. P is classified as a partnership for Federal tax purposes under the rules of §§ 301.7701–2, and 301.7701–3.

(ii) *Result.* P is a domestic partnership because it is an entity that is classified as a partnership and it is organized as an entity under the laws of State B.

(c) *Effective date.*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the rules of this section apply as of August 12, 2004, to all business entities existing on or after that date.

(2) *Transition rule.* For business entities created or organized under the laws of more than one jurisdiction as of August 12, 2004, the rules of this section apply as of May 1, 2006. These entities, however, may rely on the rules of this section as of August 12, 2004.

§ 301.7701–5T [Removed]

■ **Par. 7.** Section 301.7701–5T is removed.

Approved: January 17, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–817 Filed 1–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 392

[DoD Instruction 5134.04]

Director of Small and Disadvantaged Business Utilization

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes regulations from Title 32 of the Code of Federal Regulations concerning the Director of Small and Disadvantaged Business Utilization. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

EFFECTIVE DATE: January 30, 2006.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum (703) 696–4970.

SUPPLEMENTARY INFORMATION: The revised DoD Instruction 5134.04 is available at *http://www.dtic.mil/whs/directives/corres/html/513404.htm.*

List of Subjects in 32 CFR Part 392

Organizations.

PART 392—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 392 is removed.

Dated: January 24, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–814 Filed 1–27–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Honolulu 06–002]

RIN 1625–AA87

Security Zone; Pearl Harbor and Adjacent Waters, Honolulu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: This temporary rule establishes a 500-yard moving security zone around the U.S. Forces vessel SBX–1 during transit and float-off operations in the waters adjacent to Pearl Harbor, HI. The SBX–1 will transit aboard the M/V BLUE MARLIN and will be floated-off and escorted into Pearl Harbor. This security zone is necessary to protect the SBX–1 from hazards associated with other vessels or persons approaching too close during the transit, float-off, and escort operations. Entry of persons or vessels into this temporary security zone is prohibited unless authorized by the Captain of the Port (COTP).

DATES: This rule is effective from 12 a.m. (HST) on January 13, 2006 to 11:59 p.m. (HST) on January 31, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Honolulu 06–002 and are available for inspection or copying at Coast Guard Sector Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard was not given the final voyage plan in time to initiate full rulemaking, and the need for this temporary security zone was not determined until less than 30 days before the SBX–1 will require the zone's protection. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the transit would occur before the rulemaking process was complete, thereby jeopardizing the security of the people and property associated with the operation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The COTP finds this good cause to be the immediate need for a security zone to allay the waterborne security threats surrounding the SBX–1's transit.

Background and Purpose

On January 9, 2006, U.S. Forces vessel SBX–1 entered the Honolulu Captain of the Port Zone while attached to the loading platform of M/V BLUE MARLIN. COTP Honolulu Order 06–001 established a security zone to protect its float-off and transit into Pearl Harbor, HI (165.T14–131 Security Zone; Pearl Harbor and adjacent waters, Honolulu, HI).

That temporary final rule expired on January 12, 2006 at 11:59 p.m. The Navy contacted the Coast Guard that day to