NOTE: This handout is intended only for purposes of facilitating discussion at the interested parties meeting on August 3, 2016.

18 CCR 23038(b)-4 – New Provision – dft4a
18 CCR 23038(b)-5 – New Provision
(13 Jun 16)

§ 23038(b)-4. [Reserved.]

~~§ 301.7701-5~~ § 23038(b)-5. Domestic and foreign business entities.

(a) Domestic and foreign business entities. For purposes of Regs. §§ 23038(b)-1, 23038(b)-2, and 23038(b)-3, ~~A~~ a business entity (including an entity that is disregarded as separate from its owner under ~~§ 301.7701-2(c)~~ Reg. § 23038(b)-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)~~ Reg. § 23038(b)-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~~ Regs. § 23038(b)-2 and § 23038(b)-3 for the rules governing the classification of entities.

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

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~~ California income and franchise tax purposes under the rules of ~~§§ 301.7701-2, and 301.7701-3~~ Regs. § 23038(b)-2 and § 23038(b)-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~~ California income and franchise tax purposes under the rules of ~~§§ 301.7701-2, and 301.7701-3~~ Regs. § 23038(b)-2 and § 23038(b)-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~~ subsection (c)(2) of this ~~section~~ regulation, the rules of this ~~section~~ regulation 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~~ regulation apply as of May 1, 2006. These entities, however, may rely on the rules of this ~~section~~ regulation as of August 12, 2004.

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