Is an extension was granted) of the inadvertent change to avoid a change in the trust's residency?

No

Yes

The trust satisfies the control test.

Reg. 301.7701-7(d)(4)(iv)

(1) A trust is a United States person if (i) a court within the United States is able to exercise primary supervision over the administration of the trust, (ii) any substantial decision of the trust is made by U.S. persons, and (iii) the trust is not a foreign trust. The term United States person means (A) a qualified trust described in section 401(a); (B) a trust described in section 408(a), 408(b), or 408(c); (C) a trust that is a charitable remainder trust described in section 642(c) or 642(d); (D) a trust that is an individual retirement account described in section 408(a); (E) a trust that is an individual retirement account described in section 408(k); (F) a trust that is a qualified trust described in section 401(a) and (iv) a trust that is a “domestic trust” as defined in section 301.7701-6(c).

No

Yes

The trust satisfies the control test.

Reg. 301.7701-7(d)(4)(iv)

Do U.S. persons have authority to control all of the substantial decisions made by the trust? The term control means having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto any of the substantial decisions. To determine whether persons have control, it is necessary to consider all persons who have authority to make a substantial decision of the trust, not only the trust fiduciaries. See the gray box to the right for a definition of substantial decision.

Reg. 301.7701-7(d)(1)(iv)

(1) A trust is a United States person if (i) a court within the United States is able to exercise primary supervision over the administration of the trust; and (ii) one or more United States persons have the authority to control all substantial decisions of the trust (control test).

(2) A trust is a United States person for purposes of the Internal Revenue Code (Code) on any day that the trust meets both the court test and the control test. For purposes of the regulations in this chapter, the term domestic trust means that a trust that is a United States person. The term foreign trust means any trust other than a domestic trust.

No

Yes

The trust satisfies the control test.

Reg. 301.7701-7(d)(4)(iv)

Would an attempt by any governmental agency or creditor to collect information from or assert a claim against the trust cause one or more substantial decisions of the trust to no longer be controlled by U.S. persons?

Yes

No

The trust satisfies the control test.

Reg. 301.7701-7(d)(4)(iv)

Substantial Decisions Defined

The term substantial decisions means those decisions that persons are authorized or required to make under the terms of the trust instrument and applicable law and that are not ministerial. Decisions that are not ministerial include decisions regarding the following:

(A) Whether and when to distribute income or corpus;

(B) The amount of any distributions;

(C) The selection of a beneficiary;

(D) Whether to terminate the trust;

(E) Whether to compromise, arbitrate, or abandon claims of the trust;

(F) Whether to sue on behalf of the trust or to defend suits against the trust;

(G) Whether to remove, add, or replace a trustee;

(H) Whether to appoint a successor trustee to succeed a trustee who has died, resigned, or otherwise ceased to act as a trustee, even if the power to make such a decision is not accompanied by an unrestricted power to remove a trustee, unless the power to make such a decision is limited such that it cannot be exercised in a manner that would change the trust's residency from foreign to domestic, or vice versa;

(I) Investment decisions; however, if a United States person under section 7701(a)(30)(E) hires an investment advisor for the trust, investment decisions made by the investment advisor are not considered substantial decisions controlled by the United States person if the United States person can terminate the investment advisor's power to make investment decisions at will.