

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
FEINGOLD & ALPERT, L.L.P.]

May 18, 2011

CC:PA:LPD:PR (REG-146097-09)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Benjamin Franklin Station  
Washington DC 20044

To whom it may concern:

I am writing in response to your request for comments regarding guidance projects and issues concerning the interpretation and implementation of Subtitle A of Title V of the HIRE Act (“Subtitle A”).

Subtitle A address withholding requirements with respect to a “foreign financial institution,” which is defined as a financial institution that is a foreign entity, or a “non-financial foreign entity.” That is, each of these definitions encompasses only entities. I would suggest that regulations and other guidance clarify that a disregarded entity or a grantor trust cannot be either a foreign financial institution or a non-financial foreign entity. In such circumstances, the withholding agent would look to the owner of the disregarded entity or the grantor of the trust to determine whether or how Subtitle A applied. Thus, if a grantor trust owned a disregarded entity, a withholding agent that received the appropriate W-8BEN (from the disregarded entity) and W-8IMY (from the grantor trust) would treat any withholdable payment as being made to the individual grantor and Subtitle A would not apply.

The treatment described above flows from the very nature of disregarded entities and grantor trusts ~ the owner/grantor thereof is treated as the owner of the assets held in the disregarded entity/grantor trust. The reason clarification by regulation is necessary is to eliminate the need for taxpayers in this situation to address this issue with U.S. financial institutions that are potential withholding agents and to give comfort to those financial institutions that they need not insist that the (non tax) holder of the account register to become a participating foreign financial institution.

Sincerely yours,

Jonathan S. Brenner  
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New York, NY