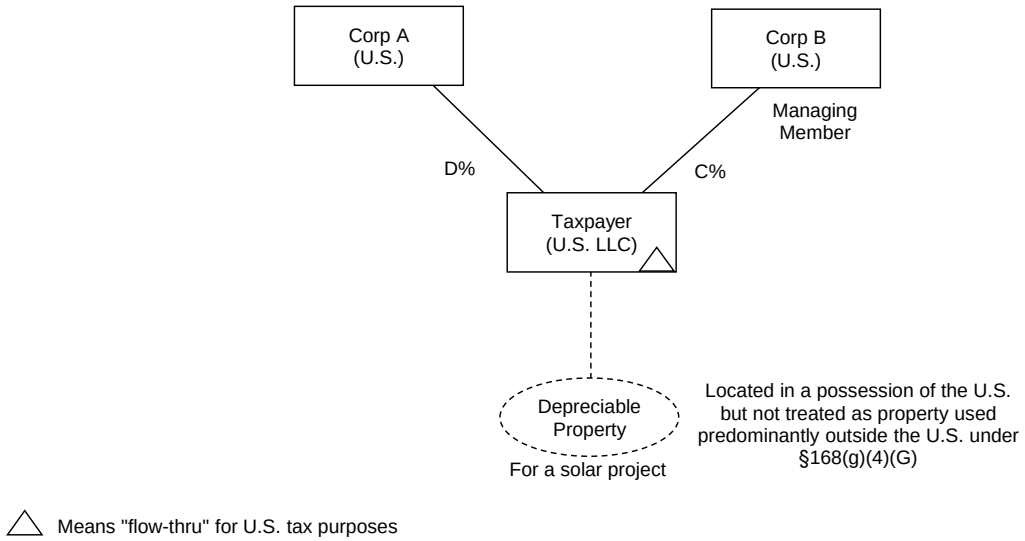
PLR 201324005:
ADS Depreciation Not Required for Possession Located Property Held Through a Partnership



Taxpayer is a State limited liability company. Taxpayer has two members: Corp A, a State corporation, holds a D percent interest in Taxpayer, and Corp B, a State corporation, holds a C percent interest in Taxpayer and is the managing member of taxpayer. Each of Corp A and Corp B are domestic corporations, neither of which has an election in effect under § 936. Taxpayer has not elected to be treated as an association taxable as a corporation pursuant to Reg. 301.7701-3(a) and, thus, is treated as a partnership for federal income tax purposes. Taxpayer is engaged principally in the business of developing a solar project that will be located in a possession of the U.S. (the "Project"). The Project will include tangible property that will be subject to a depreciation allowance pursuant to § 168 (the "Depreciable Property"). The Depreciable Property will be used predominantly in a possession of the U.S.

Section 168(g)(1)(A) provides that any tangible property used predominantly outside the United States during the taxable year must be determined under the alternative depreciation system of § 168(g). Section 168(g)(4) lists exceptions to § 168(g)(1)(A) for certain property used outside the United States. Section 168(g)(4)(G) provides that property will not be treated as used predominantly outside the United States if the property is owned by a domestic corporation (other than a corporation which has an election in effect under § 936) or by a United States citizen (other than a citizen entitled to the benefits of § 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

In light of the legislative history of §168(g)(4) and former §48(a)(2)(B)(vii), the IRS held that §168(g)(4)(G) is intended to apply to a domestic partnership where all of its partners are domestic corporations that do not have an election in effect under §936 or are United States citizens that are not entitled to the benefits of §931 or 933.