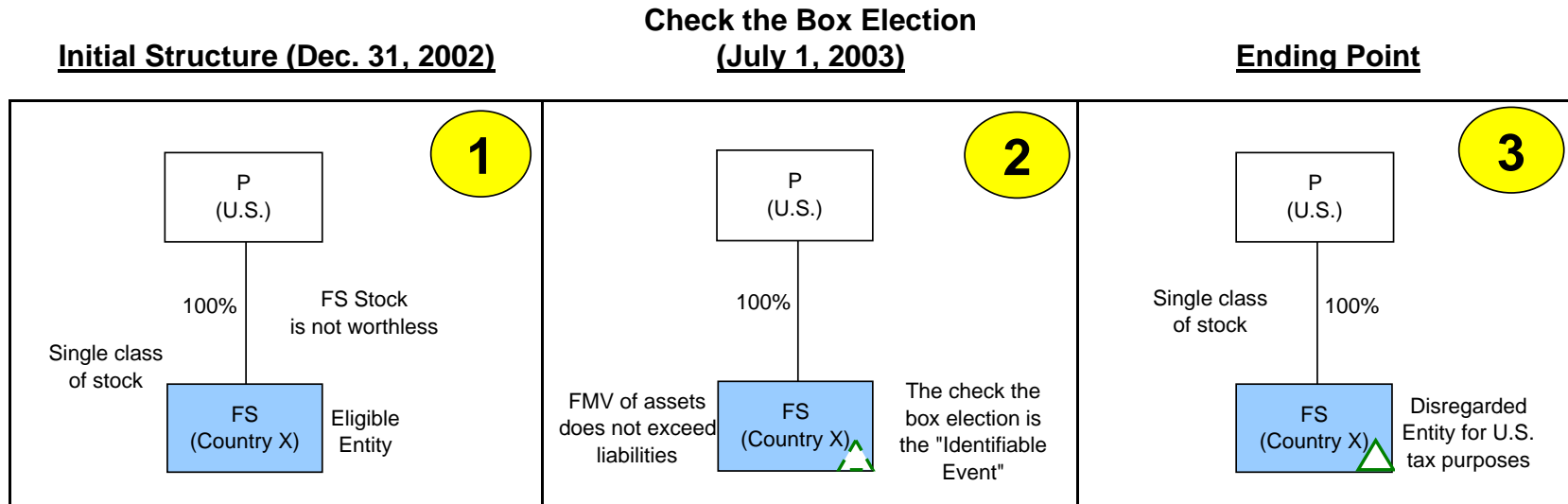


Check the Box Election As Identifiable Event For Worthless Stock Deduction



Reg. 301.7701-3(g)(1)(iii) provides that if an eligible entity classified as an association properly elects under Reg. 301.7701-3(c)(1)(i) to be classified as a disregarded entity, the association is deemed to distribute all of its assets and liabilities to its single owner in liquidation of the association. Reg. 1.332-2(b) provides that section 332 applies only to those cases in which the recipient corporation receives at least partial payment for stock which it owns in the liquidating corporation. If section 332 is not applicable, then see section 165(g) relative to allowance of losses on worthless securities.

Where a worthless stock deduction is claimed upon the liquidation of a corporation and the stock did not become worthless in a prior tax year, the standard for determining worthlessness is whether the shareholders receive payment for their stock. See *H.K. Porter Co. v. Commissioner*, 87 T.C. 689 (1986). The fact that a shareholder receives no payment for its stock in a liquidation of the corporation demonstrates that such shareholder's stock is worthless. In addition, the liquidation is an identifiable event that fixes the loss with respect to the stock.

The fair market value of a corporation's intangible assets is determined by reference to all of the facts and circumstances, which may include, but are not limited to, the corporation's prospects for future profit as evidenced by such things as the corporation's economic outlook, the demand for the corporation's products, the efficiency of the corporation's operations, and the size of the corporation's customer base. In Situation 2, at the close of the day immediately before the effective date of the election, the stock of FS is worthless because the fair market value of FS's assets, including intangible assets such as goodwill and going concern value, does not exceed the sum of FS's liabilities. Accordingly, P does not receive any payment on its FS stock in the deemed liquidation of FS and section 332 does not apply to the deemed liquidation. The deemed liquidation is an identifiable event that fixes P's loss with respect to the FS stock. Therefore, P is allowed a worthless security deduction under section 165(g)(3) on its tax return for the 2003 taxable year.

△ Means "flow-thru" for U.S. tax purposes.

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