

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-125904-00

Date:

September 27, 2001

LEGEND

Taxpayer =
Entity =
Date 1, 2, 3 =
Individual A, B =

Dear

This replies to a letter dated October 31, 2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the statement of election and agreement provided under § 1.1503-2(g)(2)(i) with respect to Entity for the tax years ended on Dates 1, 2 and 3, and to file the annual certification as required by § 1.1503-2(g)(2)(vi) with respect to the losses of Entity incurred in the tax years ended on Dates 1 and 2. Additional information was submitted in a letter dated August 1, 2001. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Individual A is the Vice President of Taxation for Taxpayer, and Individual B is a partner in CPA Firm. Because Individuals A and B concluded that the specific facts of Taxpayer qualified Taxpayer for the exception to the dual consolidated loss rules under § 1.1503-2(c)(5)(ii), Taxpayer did not elect to be bound by the elective relief provision of § 1.1503-2(g)(2) for the tax years ended on Dates 1, 2 and 3. Later, Individuals A and B learned that their conclusion was inconsistent with the position of the IRS that the losses of Entity were subject to the dual consolidated loss rules.

Treas. Reg. § 301.9100 -1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except

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subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, § 1.1503-2(g)(2) fixes the time to file the statement of election and agreement, and the annual certification. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the statement of election and agreement provided under § 1.1503-2(g)(2)(i) with respect to Entity for the tax years ended on Dates 1, 2 and 3, and to file the annual certification as required by § 1.1503-2(g)(2)(vi) with respect to the losses of Entity incurred in the tax years ended on Dates 1 and 2.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the statements of elections and agreements, and the annual certifications. § 301.9100-1(a).

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be associated with the statements of elections and agreements, and the annual certifications.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)