

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-108924-00

Date:

December 18, 2000

LEGEND

Taxpayer	=
Subsidiary	=
Branches	=
Tax Years X and Y	=
Individual	=

Dear :

This replies to a letter dated April 11, 2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the elections and agreements (“elections”) described in § 1.1503-2(g)(2) with respect to losses incurred by Subsidiary’s Branches for Tax Years X and Y, as the case may be. 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.

Taxpayer has an internal tax department staffed with both accountants and lawyers. In addition to tax returns that are prepared by other divisions in various locations, a number of tax returns are prepared by Taxpayer’s corporate headquarter’s staff (“Corporate Staff”). The Corporate Staff is also responsible for coordination of all elections that are to be filed with Taxpayer’s consolidated tax return. As a general rule, most of the corporate tax staff has extensive domestic taxation experience, but only minimal international taxation experience. The Corporate Staff included Individuals A,

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B, C, D, E, and F.

The tax return of Subsidiary for Year X was one of the tax returns prepared by the Corporate Staff. Individual A, a senior tax analyst, was responsible for the preparation of the Year X tax return. Individual A relying on information included in the prior year's tax return was not aware that elections were required with respect to the losses generated by Subsidiary's foreign branch operations. Although the elections were made for the prior year's losses, a copy of the elections was not included in the Subsidiary tax return file, but rather in Taxpayer's elections file. Individual B, a senior tax analyst, reviewed the tax return, and did not discover the omission during the review. Neither Individual A nor Individual B consulted with senior members of the Corporate Staff who were aware of the filing requirements with respect to the elections.

Individual C, a senior tax analyst, coordinated preparation of Taxpayer's Year X elections for the consolidated group. Individual C was responsible for collection of all elections from Taxpayer's many divisions, representing in excess of two hundred companies included in the consolidated tax return. In addition to Subsidiary's elections for its foreign branches, there were hundreds of other elections and information statements filed for the other domestic companies included in the consolidated tax return. Individual C concluded the elections work and was not aware that the annual election with respect to the Subsidiary foreign branch losses had been omitted. Individuals B and D, a Corporate tax attorney, reviewed Individual C's work and did not discover the omission.

The tax return of Subsidiary for Year Y was also prepared by the Corporate Staff. The Year Y tax return was prepared by a temporary employee hired on a contract basis to assist with the Year Y tax return process. This individual, relying on the information included in the Year X tax return file, was not aware that the elections were required in Year Y. Individual E and Individual F, senior tax analysts, coordinated Taxpayer's Year Y elections. Individuals E and F reviewed the prior year elections and because Subsidiary's elections for Year X had been omitted, no elections were filed for Year Y. As was the case in Year X, the omission was not identified during the primary review or during any secondary review of the tax return for Year Y.

Although currently under audit for Year X, the IRS has not discovered Taxpayer's failure to file the elections with respect to Subsidiary's foreign branch losses.

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

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to make a regulatory election under all subtitles of the Internal Revenue Code except 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 elections. 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 elections described in § 1.1503-2(g)(2) with respect to losses incurred by Subsidiary's Branches for Tax Years X and Y, as the case may be. The granting of an extension of time to file the agreements and certifications is not a determination that Taxpayer is otherwise eligible to make the elections. § 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.

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.

Sincerely,

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