

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:4-PLR-160952-01

Date:

December 27, 2001

Taxpayer Identification Number:

LEGEND:

X =

Y =

Z =

F =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear :

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This letter is in response to your request, dated October 18, 2001, for a private letter ruling that section 1504(d) remains applicable to F, a Canadian banking subsidiary, until June 14, 2002, under Notice 2000-7, 2000-4 I.R.B. 419 (the "Notice").

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 ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

X was a domestic financial institution that engaged in all aspects of commercial

banking. X formed F, a Canadian corporation, to conduct banking activities in Canada. Upon the incorporation of F, X made an election under section 1504(d) to treat F as a domestic corporation for all purposes of subtitle A of the Code, including the consolidated return provisions. X has included F in X's consolidated federal income tax return for each year of F's existence. X based its election for F under section 1504(d) on the Canadian Bank Act ("Bank Act"), which prohibits foreign banks from operating in Canada through an entity not organized under the corporate laws of Canada.

Section 1504(d) of the Code allows, in certain circumstances, a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock of a Mexican or Canadian corporation, to elect to treat such corporation as a domestic corporation for all purposes of subtitle A of the Code. Among other requirements, such an election may be made only if the sole purpose for maintaining such corporation is to comply with Canadian or Mexican law regulating the title and operation of property.

Effective June 28, 1999, Canada amended the Bank Act ("Amended Bank Act"). Under the Amended Bank Act, organizations not incorporated in Canada may apply for an order from the Canadian Minister of Finance and the Office of the Superintendent of Financial Institutions permitting the foreign organization to conduct certain aspects of the banking business, including those activities conducted by F, through a Canadian branch.

In addition, on May 11, 1999, the Canadian government announced its intention to enact legislation that would allow an indefinite deferral of the Canadian tax imposed upon the liquidation of a Canadian banking subsidiary as part of its conversion to branch form ("Original Relief Legislation"). Department of Finance Release 99-044 (May 11, 1999). Under the Original Relief Legislation, relief would have been available only if the Canadian banking subsidiary formally applied for regulatory approval to convert to branch form on or before December 31, 2000. In addition, the Canadian banking subsidiary must have completed its conversion to branch form on or before the earlier of (i) the day that is six months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the Amended Act, or (ii) December 31, 2002. A Department of Finance release dated August 8, 2000, (Release 2000-059) extended the December 31, 2000 deadline to apply for regulatory approval to convert to branch form to March 31, 2001.

The Original Relief Legislation was approved in slightly different form on June 14, 2001, as the combined Relief Legislation and Branch Tax Legislation, in section 142.7 of the Tax Act ("Amended Relief Legislation"). Under the Amended Relief Legislation, in order to receive the tax deferral upon liquidation, Canadian banking subsidiaries must still apply to the Superintendent of Financial Institutions by March 31, 2001 for an order to convert to a branch. However, section 142.7(11) of the Amended Relief Legislation allows the subsidiary a longer period of time than was granted in the

Original Relief Legislation to convert to branch form after approval of the conversion is received, while still receiving the indefinite deferral of Canadian tax normally imposed upon a liquidation into branch form. Under the Amended Relief Legislation, tax relief will be available to a Canadian subsidiary that completes its conversion to branch form by the later of:

- (1) The earlier of -
 - (i) the date one year after permission is granted (in F's case, Date 4), or
 - (ii) the date three years after the effective date of the Amended Relief Legislation (i.e., June 14, 2004); or
- (2) The date one year after the effective date of the Amended Relief Legislation (i.e., June 14, 2002)

The Ministry of Finance Explanatory Notes to the legislation explain that condition (2) was added to ensure that "even if an entrant bank receives an order to carry on business as a branch prior to [the effective date of the Amended Relief Legislation], the deadline . . . will not be earlier than one year after [the effective date of the Amended Relief Legislation]."

F requested permission from Canada to convert to branch form in Year 1, and approval was granted on Date 1, prior to the effective date of the Amended Relief Legislation. Under the Original Relief Legislation, F would have been entitled to deferral of Canadian tax on conversion only if it completed the conversion by Date 2 (the earlier of the date six months after permission was granted and December 31, 2002). As of Date 2, however, the relief legislation had not even been formally introduced in the Canadian parliament. Under the Amended Relief Legislation, F will be entitled to Canadian tax relief if it completes its conversion by June 14, 2002 (the later of Date 4 and June 14, 2002).

In the Notice, the Service noted that an election under section 1504(d) is normally terminated on the date of the repeal of the Canadian or Mexican law regulating the title and operation of property, on which law the section 1504(d) election depends. However, the Service determined that a foreign corporation could continue to be viewed as maintained solely for the purpose of complying with Canadian or Mexican law for a short period of time following the repeal of that foreign law if the taxpayer takes reasonable and expeditious measures to respond to the change in foreign law and for good reason is unable to complete such measures by the effective date of the repeal.

The Service noted that Canada had determined that the period described in the Original Relief Legislation would be "a reasonable period for taxpayers to take the steps necessary to convert to branch form." Therefore, if a Canadian banking subsidiary did not apply for permission to convert to a branch by December 31, 2000, its election under 1504(d) would terminate on that day. If a Canadian banking subsidiary requested permission to convert to branch form by December 31, 2000, it would be

considered for U.S. tax purposes to be maintained solely for the purpose of complying with the Bank Act (and, thus, for purposes of complying with section 1504(d)), until the earlier of (i) the day that is six months after the day that the Superintendent of Financial Institutions makes a formal determination whether the Canadian banking subsidiary qualifies to operate in branch form, or (ii) December 31, 2002. Using the deadlines set forth in the Original Relief Legislation and incorporated into the Notice, F would be considered maintained for purposes of complying with the Bank Act, within the meaning of section 1504(d), only until Date 2.

The Notice reflects the timing rules in the proposed Original Relief Legislation. The timing rule in the final Amended Relief Legislation differs, however, because the Amended Relief Legislation was not enacted until two years after the proposal of the Original Relief Legislation. The purpose of the Notice was to apply section 1504(d) to reflect the Canadian rules under the final relief legislation.

The relief period set out in the Amended Relief Legislation represents “a reasonable period for taxpayers to take the steps necessary to convert to branch form” under the Notice.

Based solely on the information submitted and the representations made, F will be considered maintained for purposes of complying with Canadian law, within the meaning of section 1504(d), until June 14, 2002.

No opinion is expressed whether F is or was maintained solely for such purpose, or whether F satisfies the other requirements of section 1504(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,
Charles P. Besecky
Chief, Branch 4
Office of Associate Chief Counsel
(International)

cc: