

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date: March 19, 2004

LEGEND

Taxpayer =

Corp X =

Date 1 =

Date 2 =

Date 3 =

Dear :

This replies to a letter dated November 21, 2003, in which Taxpayer requests an extension of time under Treas. Reg. §301.9100-3 to file the new (g)(2)(i) agreement as described in revised §1.1503-2(g)(2)(iv)(B)(3)(iii) in lieu of filing the agreement previously described in § 1.1503-2(g)(2)(i) for the tax year ended on Date 2 with respect to the dual consolidated loss incurred by Corp X. 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.

On Date 1, Taxpayer acquired Corp X. The acquisition constituted a triggering event under §1.1503-2(g)(2)(iii)(2), as in effect on that date. However, if, among other requirements, Taxpayer and Corp X entered into a closing agreement, as provided in §1.1503-2(g)(2)(iv)(B)(2)(i), then, in effect, this acquisition would not constitute a triggering event requiring recapture of dual consolidated losses (DCLs).

T.D. 9084 (68 CFR 44617), which was published in the Federal Register on July 30, 2003, enumerates certain transactions otherwise constituting triggering events that, when occurring on or after January 1, 2002, will no longer trigger recapture of DCLs or payment of the associated interest charge, provided that certain requirements are satisfied and, as a result, would no longer require a closing agreement to prevent such recapture.

Taxpayer's acquisition of Corp X occurred after January 1, 2002. Such acquisition would not constitute a triggering event requiring recapture of DCLs or the payment of associated interest charge if all of the requirements of new rules set forth in revised Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3) are met.

Revised §1.1503-2(g)(2)(iv)(B)(3)(iii) required Taxpayer to file a new (g)(2)(i) agreement, as described therein, which was to be filed with its timely filed income tax return for the taxable year of Taxpayer's acquisition of Corp X. In this case, Taxpayer had not filed either the new (g)(2)(i) agreement nor did Taxpayer file the agreement described in § 1.1503-2(g)(2)(i) prior to its revision by T.D. 9084 due to a misunderstanding.

Because July 30, 2003, the date that T.D. 9084 was published in the Federal Register, is after Date 3, the date that Taxpayer filed its tax return for the taxable year in which Taxpayer acquired Corp X, Taxpayer could not have satisfied the new (g)(2)(i) filing requirement imposed by revised §1.1503-2(g)(2)(iv)(B)(3)(iii) when it filed its tax return on Date 3. Therefore, Taxpayer now requests relief to file the new (g)(2)(i) agreement in lieu of filing the agreement described in § 1.1503-2(g)(2)(i) prior to its revision by T.D. 9084.

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 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, the new (g)(2)(i) agreement described in revised §1.1503-2(g)(2)(iv)(B)(iii) is a regulatory election as defined in §301.9100-1(b). Therefore, the Commissioner has discretionary authority under §301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in §301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 45 days from the date of this ruling letter to file a new (g)(2)(i) agreement described in revised §1.1503-2(g)(2)(iv)(B)(3)(iii) for the tax year ended on Date 2

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the new (g)(2)(i) agreement. §301.9100-1(a).

A copy of this ruling letter should be associated with the new (g)(2)(i) agreement.

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,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein

Allen Goldstein

Reviewer

Enclosure:

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