

Internal Revenue Service

Department of the Treasury
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Person To Contact:

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Telephone Number:

Refer Reply To:

CC: INTL – PLR-104709-03

Date:

April 08, 2004

LEGEND

Taxpayer =

Entity A =

Entity B =

Date 1, 2 =

CPA Firm =

Individual A =

Tax =

Professionals

Dear :

This replies to a letter dated January 13, 2003, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the following: (1) the election and agreement described in §1.1503-2(g)(2)(i) with respect to the dual consolidated losses incurred by Entity A in the tax year ended on Date 1; (2) a separate election and agreement described in §1.1503-2(g)(2)(i) with respect to the dual consolidated losses incurred by Entity A and Entity B in the tax year ended on Date 2; and (3) the annual certification described in § 1.1503-2(g)(2)(vi) for the tax year ended on Date 2 with respect to the dual consolidated losses incurred by Entity A in the tax year ended on Date 1. The information submitted for consideration is substantially as set forth below.

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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.

CPA Firm has provided tax service to Taxpayer in excess of eight years, which include the tax years at issue in this ruling letter.

Individual A is an officer of Taxpayer. The affidavit of Individual A states that Taxpayer reasonably relied on CPA Firm to make the necessary elections that would allow Taxpayer to use the dual consolidated losses incurred by Entity A and Entity B.

Tax Professionals hold positions with CPA Firm. Tax Professionals were, in various degrees, responsible for preparing, reviewing and signing the tax returns of Taxpayer for the tax years ended on Dates 1 and 2. The affidavits of Tax Professionals state that they were unaware of the requirement to file the election agreements and the annual certification described in § 1.1503-2(g)(2). The facts state that Taxpayer is requesting relief after it discovered the missed filings and before their discovery by the IRS.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and 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 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.

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In the present situation, the filings described in § 1.1503-2(g)(2) are regulatory elections 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 the following: (1) the election and agreement described in § 1.1503-2(g)(2)(i) with respect to the dual consolidated losses incurred by Entity A in the tax year end on Date 1; (2) a separate election and agreement described in § 1.1503-2(g)(2)(i) with respect to the dual consolidated losses incurred by Entity A and Entity B in the tax year ended on Date 2; and (3) the annual certification described in § 1.1503-2(g)(2)(vi) for the tax year ended on Date 2 with respect to the dual consolidated losses incurred by Entity A in the tax year ended on Date 1.

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

A copy of this ruling letter should be associated with the election agreements and the annual certification.

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.

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

Sincerely,

Associate Chief Counsel (International)

By: _____
Allen Goldstein
Reviewer

Enclosure:
Copy for 6110 purposes