

Internal Revenue Service

Number: **200448035**

Release Date: 11/26/04

Index Number: 9100.22-00, 1503.04

Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:INTL:B03 – PLR-144375-03

Date: August 11, 2004

TYs:

Legend

Corp W =

Corp X =

Corp Y =

Corp Z =

CPA Firm =

Date N =

Date O =

Individual P =

Individual Q =

Tax Year A =

Tax Year B =

Tax year C =

Tax Year D =

Tax Year E =

Tax Year F =

Tax Year G =

Dear

This is in response to a letter dated July 23, 2003, and supplemented by a letter dated March 17, 2004, in which Corp X requests an extension of time under Treas. Reg. §301.9100-3 to file the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), in accordance with Exhibit A, which is attached to and made part of this ruling letter; the annual certification statements described in Treas. Reg. §1.1503-2(g)(2)(vi)(B) in accordance with Exhibit B, which is attached to and made part of this ruling letter; and the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii). The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Prior to Date N, Corp Y wholly owned Corp Z, a foreign subsidiary, that was a hybrid entity separate unit, as defined in Treas. Reg. §1.1503-2(c)(4), and a dual resident corporation (DRC), as defined in Treas. Reg. §1.1503-2(c)(2). Corp Z had dual consolidated losses (DCLs), as defined in Treas. Reg. 1.1503-2(c)(5). Elections and agreements, as defined in Treas. Reg. §1.1503-2(g)(2)(i), for Tax Year A, Tax Year B, and Tax Year C, as set forth in Exhibit A, and annual certifications, as defined in Treas. Reg. §1.1503-2(g)(2)(vi)(B), for Tax Year B and Tax Year C, as set forth in Exhibit B, should have been filed by Corp Y. On Date N, Corp W, a holding corporation, acquired Corp Y in a transaction intended to qualify as a tax-free reorganization. Corp W then changed its name to Corp X. Corp X should have filed elections and agreements, as defined in Treas. Reg. §1.1503-2(g)(2)(i), for Tax Years D through G, as set forth in Exhibit A, and annual certifications, as defined in Treas. Reg. §1.1503-2(g)(2)(vi)(B), for Tax Years D through G, as set forth in Exhibit B.

Individual P is the Director of Taxes for Corp X. Individual Q is a partner in CPA Firm. Individual Q and other individuals from CPA Firm met with representatives of Corp X, including Individual P, on Date O and alerted Corp X of the need to file the required elections, agreements, and annual certifications that had not been filed previously by either Corp Y or Corp X. At this meeting, it was indicated that Corp Y had not believed that Corp Z's losses for Tax Years A, B, and C were DCLs based upon their interpretation of Treas. Reg. §1.1503-2(c)(5)(ii)(A). As a result, Corp Y did not file the election statements or the annual certifications required by Treas. Reg. §§1.1503-

2(g)(2)(ii) and 1.1503-2(g)(2)(vi), respectively, with respect to the losses incurred in Tax Years A, B, and C. In addition, the representatives of CPA Firm told Corp X that it should also have filed an agreement under Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) as a result of the merger that took place on Date N.

Affidavits of Individual P and Individual Q and the facts submitted show that, as a result of the meeting on Date O, this request for relief for an extension of time under Treas. Reg. §301.9100-3 to file elections and agreements, in accordance with Exhibit A, annual certifications, in accordance with Exhibit B, as well as the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) was initiated.

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 Treas. Reg. §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 Treas. Reg. §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 election statements described in Treas. Reg. §1.1503-2(g)(2)(i), the annual certification statements described in Treas. Reg. §1.1503-2(g)(2)(vi)(B), and the election and agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) are regulatory elections as defined in Treas. Reg. §301.9100-1(b). Therefore, the Commissioner has the discretionary authority under Treas. Reg. §301.9100-1(c) to grant an extension of time, provided that the taxpayer satisfies the rules set forth in Treas. Reg. §301.9100-3(a).

Based upon the facts and circumstances submitted, we conclude that Corp X satisfies Treas. Reg. §301.9100-3(a). Accordingly, Corp X is granted an extension of time of 45 days from the date of this ruling letter to file the elections and agreements in accordance with Exhibit A; the annual certifications in accordance with Exhibit B; and the election and agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) that should have been included in the Corp X Federal income tax return for the tax year that included Date N.

The granting of an extension of time is not a determination that Corp X is otherwise eligible to file the elections, agreements, and certifications. See Treas. Reg. §301.9100-1(a).

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(k)(3) of the Code provides that it may not be used or cited as precedent.

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

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

Sincerely,

Allen Goldstein
Reviewer
Office of Associate Chief Counsel

(International)

Enclosure (1) Copy for 6110 purposes

EXHIBIT A

Extension of time to file the Election and Agreement described in Treas. Reg. §1.1503-2(g)(2)(i) has been requested as indicated:

Name of Entity	Tax Year for which an extension of time to file the Election and Agreement is Requested
Corp Z	Tax Year A
	Tax Year B
	Tax Year C
	Tax Year D
	Tax Year E
	Tax Year F
	Tax Year G

Exhibit B

Extension of time to file to file the Annual Certification described in Treas. Reg. §1.1503-2(g)(2)(vi)(B) has been requested as indicated:

Name of Entity	Tax Year for which an extension of time to file the Annual Certification is Requested
Corp Z	Tax Year B
	Tax Year C
	Tax Year D
	Tax Year E
	Tax Year F
	Tax Year G