

In re: PLR-168533-03

This replies to letters dated November 21, 2003, and October 7, 2004, in which Taxpayer requests an extension of time under Treas. Reg. §301.9100-3 to file the election agreement described in §1.1503-2(g)(2)(i) (the 2(g)(2)(i) agreement) for the tax years ended on Dates A, B, C, D, and E with respect to Entity A's dual consolidated losses and the annual certification statements described in §1.1503-2(g)(2)(vi)(B) (2(g)(2)(vi)(B) certification) for tax years ended on Dates B, C, D, and E with respect to Entity A's dual consolidated losses incurred in each of the prior tax years ended on Dates A, B, C, and D. 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 is a United States corporation and the common parent of a consolidated group. Entity A is a Country A subsidiary of Taxpayer. Taxpayer states that pursuant to a previous election, Entity A is treated as a branch for United States income tax purposes.

Entity A generated losses for Taxpayer's tax years ended on Dates A, B, C, D, and E. These losses were dual consolidated losses within the meaning of §1503(d). Taxpayer used the losses generated by Entity A to offset its income for those years.

Taxpayer engaged CPA firm A to prepare Taxpayer's international tax filings for the tax years ended on Dates A, B, C, and D. Taxpayer engaged CPA firm B to prepare Taxpayer's international tax filings for the tax years ended on Date E. Individual A is the Executive Vice President, Chief Financial Officer, and Treasurer of Taxpayer. Individual B is the partner of CPA firm B responsible for coordinating the tax services that CPA firm B provides to Taxpayer. The affidavits of Individual A and Individual B and the facts submitted show that CPA firm A failed to file, or advise Taxpayer to file, the 2(g)(2)(i) agreement for the tax years ended on Dates A, B, C, and D and the 2(g)(2)(vi)(B) certifications for the tax years ended on Dates B, C, and D, and that CPA firm B failed to file, or advise Taxpayer to file, the 2(g)(2)(i) agreement and the 2(g)(2)(vi)(B) certifications for the tax year ended on Date E.

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.

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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 agreements 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 election agreement described in §1.1503-2(g)(2)(i) for the tax years ended on Dates A, B, C, D, and E with respect to Entity A's dual consolidated losses and an extension of time of 45 days from the date of this ruling letter to file the annual certification required under §1.1503-2(g)(2)(vi)(B) for tax years ended on Dates B, C, D, and E with respect to Entity A's dual consolidated losses incurred in each of the tax years ended on Date A, B, C, and D.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the 2(g)(2)(i) election agreements and the 2(g)(2)(vi)(B) certifications. §301.9100-1(a).

A copy of this ruling letter should be associated with the 2(g)(2)(i) agreements and the 2(g)(2)(vi)(B) certifications.

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.

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

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein
Allen Goldstein
Reviewer

Enclosure:

Copy for 6110 purpose