

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In re:

Refer Reply To:

CC:INTL – PLR-170434-03

Date:

January 27, 2005

## LEGEND

Taxpayer =

Entity A =

Entity B =

Country A =

Individual A =

Individual B =

CPA Firm A =

CPA Firm B =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

In re: PLR-170434-03

Dear \_\_\_\_\_,

This replies to your letter dated December 11, 2003, in which Taxpayer requests an extension of time under Treas. Reg. §301.9100-3 to elect relief from the limitation in §1503 on the use of certain dual consolidated losses of Entity A. Taxpayer requests permission to file documents described in §1.1503-2(g)(2)(iii)(B) for the tax year ended on Date E. 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 B is also organized in Country A.

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.

On Date F, a date within Taxpayer's tax year ended on date E, Entity A merged into Entity B, with entity B surviving. Taxpayer represents that pursuant to the law of Country A, the losses of Entity A expired unused upon the merger and thus did not carryover to Entity B.

Taxpayer further represents that other than the deemed triggering event of §1.1503-2(g)(2)(iii)(A)(5) pursuant to the merger of Entity A into Entity B, none of the triggering events described in §1.1503-2(g)(2)(iii) requiring recapture have occurred.

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 its international tax filings for the tax year 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.

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The merger of Entity A into Entity B is a triggering event under §1.1503-2(g)(2)(iii)(A)(5) unless Taxpayer demonstrates that Entity A's losses cannot be used to offset the income of another person under the laws of the foreign country at anytime after the merger of Entity A into Entity B.

The affidavits of Individual A and Individual B and the facts submitted indicate that CPA firm A failed to file, or advise taxpayer to file, the 2(g)(2)(i) agreements with the Taxpayer's previously filed returns for Dates A, B, C, and D, and the 2(g)(2)(vi)(B) certifications with the previously filed returns for Dates B, C, and D. It is further stated that CPA firm B did not have sufficient time, prior to the due date of the tax return for the tax year ended on Date E, to determine whether those agreements and certifications should have been filed on those prior year returns. Therefore, CPA firm B failed to file, or advise Taxpayer to file, the 2(g)(2)(i) agreement, the 2(g)(2)(vi)(B) certifications, and the requisite rebuttal statement under §1.1503-2(g)(2)(iii)(B) with its tax return for the tax year ended on Date E. Taxpayer was subsequently granted relief under §Treas. Reg. 301.9100-3 to file late 2(g)(2)(i) agreements and 2(g)(2)(vi)(B) certifications for the above stated dates.

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.

In the present situation, the election to file the documents described in § 1.1503-2(g)(2)(iii)(B) 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

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§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 documents described in §1.1503-2(g)(2)(iii)(B) for the tax year ended on Date E with respect to the triggering event.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the documents described in §1.1503-2(g)(2)(iii)(B).

A copy of this ruling letter should be associated with the §1.1503-2(g)(2)(iii)(B) documents.

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 and its second representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein  
Allen Goldstein  
Reviewer

Enclosure:

Copy for 6110 purpose