

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-171098-03

Date:

March 10, 2005

In Re:

## LEGEND

Taxpayer =

Entity A =

Accounting =  
Firm 1

Accounting =  
Firm 2

Accounting =  
Firm 3

Subsidiary =  
One

Subsidiary =  
Two

Subsidiary =  
Three

Subsidiary =  
Four

Subsidiary =  
Five

Subsidiary =  
Six

Country A =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Individual A =

Individual B =

X =

Y =

Dear :

This replies to a letter dated December 5, 2003, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the annual certifications required by Treas. Reg. § 1.1503-2(g)(2)(vi)(B) for the tax years ending on Date B and

Date C with respect to the dual consolidated losses of Subsidiary Five and Subsidiary Six incurred in the tax year ended on Date A. 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 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 ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a domestic corporation, was the common parent of an affiliated group of corporations that, until Date F, filed a U.S. consolidated federal income tax return pursuant to § 1502 of the Internal Revenue Code (the Code). Taxpayer owns its subsidiaries in the following order: Taxpayer owns 100 percent of Subsidiary One, Subsidiary One owns 100 percent of Subsidiary Two, Subsidiary Two owns 100 percent of Subsidiary Three, Subsidiary Three owns 100 percent of Subsidiary Four, Subsidiary Four owns 100 percent of Subsidiary Five and Subsidiary Six. Taxpayer and its subsidiaries are U.S. corporations and are members of a consolidated group. Entity A is a Country A unlimited liability company which is treated as a partnership for U.S. federal income tax purposes. Subsidiary Five owns X percent and Subsidiary Six owns Y percent of Entity A.

During the tax year ended on Date A, Entity A was a Hybrid Entity Separate Unit as defined under Treas. Reg. § 1.1503-2(c)(4). Subsidiary Five and Subsidiary Six's interests in Entity A were treated as "separate units" as defined under Treas. Reg. § 1.1503-2(c)(3)(i)(B).

Taxpayer was not in compliance with the certification requirements under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) for the tax years ending on Date B and Date C. Taxpayer now requests § 9100 relief to obtain an extension of time to make the corrections and certifications.

Because the interests in Entity A are hybrid entity separate units as defined under Treas. Reg. § 1.1503-2(c)(4), Taxpayer was required to file annual certifications with its income tax return for each of the 15 years following the applicable tax year. (See Treas. Reg. § 1.1503-2(g)(2)(vi)(B)). Therefore, taxpayer seeks to cure the omitted certification statements for the tax years ending on Date B and Date C.

Beginning in the tax year ending on Date D, Taxpayer engaged Accounting Firm 3 to provide tax consulting and compliance services relating to the tax year ending on Date D. Previously, Taxpayer had engaged Accounting Firms 1 and 2 to prepare its U.S. consolidated tax returns for the tax years ending from Date A to Date C. Accounting Firms 1 and 2 did not prepare the required annual certification under Treas.

Reg. § 1.1503-2(g)(2)(vi)(B), nor did it advise Taxpayer of the requirement to make annual certifications for the tax years ending on Date B and Date C.

In the tax year ending on Date E, as part of an overall review of Taxpayer's tax position and a review of previously filed income tax returns, Accounting Firm 3 confirmed that Taxpayer did not file the required certifications for tax years ending on Date B and Date C.

Accounting Firm 3 recommended that Taxpayer pursue § 9100 relief to request an extension of time within which to file the necessary annual certifications for tax years ending on Date B and Date C. Taxpayer has submitted its ruling request before the failure to make the elections was discovered by the Service.

Individual A is the Plan Administrator of Taxpayer. Individual B is a partner with Accounting Firm 3 and is responsible for providing tax consulting services and tax compliance services relating to Taxpayer's tax year ending on Date D. The affidavits of Individuals A and B and the facts submitted set forth the reasons Taxpayer is requesting relief to file the annual certifications. Individual A's affidavit states that Taxpayer relied on Accounting Firms 1 and 2 at all times to identify and properly address issues relating to the filing of Taxpayer's federal income tax returns, including filing appropriate annual certifications. The omission of the Treas. Reg. § 1.1503-2(g)(2)(vi)(B) certifications was first discovered on Date G.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100 -1(b) 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. § 301-9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

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, Treas. Reg. § 1.1503-2(g)(2) fixes the time to file the annual certification. Therefore, the Commissioner has discretionary authority under

Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, pursuant to Treas. Reg. § 301.9100-1 and Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 45 days from the date of this ruling letter to file annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) for tax years ending on Date B and Date C.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the Treas. Reg. § 1.1503-2(g)(2)(vi)(B) annual certifications. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be attached with the Treas. Reg. § 1.1503-2(g)(2)(vi)(B) certification.

This ruling is directed only to the taxpayer who requested it. Code § 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.

The facts state that Taxpayer attached elections under Treas. Reg. § 1.1503-2(g)(2)(i) to its timely filed U.S. consolidated income tax return for the tax year ended on Date A. However, the dollar amount of the dual consolidated loss reported on the election statement was incorrect. Taxpayer has requested relief for an extension of time to correct its timely filed election under Treas. Reg. § 1.1503-2(g)(2)(i) to report the correct amount of loss. Because the election with respect to Taxpayer for the tax year ended on Date A was timely filed, Treas. Reg. § 301.9100-3 does not apply in this situation, despite the fact that the amount of the loss reported on the election statement was incorrect. However, Taxpayer may file an amended return together with an election reporting the correct amount of the loss for Taxpayer for the tax year ended on Date A.

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

Sincerely,

Joseph M. Calianno  
Special Counsel to the Deputy  
Associate Chief Counsel  
(International)

cc:

Enclosures:  
Copy for 6110 purposes