

## 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-171112-03

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 =

Date H =

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. §§ 301.9100-1 and 301.9100-3 to attach to Taxpayer's U.S. income tax return for the tax year ended on Date C the documentation required under Treas. Reg. § 1.1503-2(g)(2)(vii)(B) and Treas. Reg. § 1.1503-2(g)(2)(vii)(C). 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 C, Entity A was a Hybrid Entity Separate Unit as defined under Treas. Reg. § 1.1503-2(c)(4). Subsidiary Five's 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).

A check-the-box election was filed to change the classification of Entity A from a partnership to a corporation for U.S. income tax purposes effective on Date H. The check-the-box election to treat Entity A as a corporation constituted a triggering event within the meaning of Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(7) in the tax year ended on 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 Firm 2 did not prepare returns that recaptured the dual consolidated loss related to the tax year ended on Date C as required by Treas. Reg. § 1.1503-2(g)(2)(vii)(A). Further, Accounting Firm 2 did not attach rebuttal statements required by Treas. Reg. § 1.1503-2(g)(2)(vii)(B) and Treas. Reg. § 1.1503-2(g)(2)(vii)(C) on behalf of Taxpayer, and did not advise Taxpayer of the requirements under the regulations.

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 may have had a triggering event in the year ended on Date C and that certain administrative procedures under the Code § 1503(d) regulations were not followed.

Accounting Firm 3 recommended that Taxpayer pursue Code § 9100 relief to request an extension of time within which to file a statement to rebut the presumption of recapture of the full dual consolidated losses relating to the tax year ended on Date C as a result of the check-the-box election.

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 describe the circumstances surrounding the discovery of and the reasons for Taxpayer's failure to attach the documentation required by Treas. Reg. § 1.1503-2(g)(2)(vi)(B) and (C) to its tax return for the year ended on Date C. In addition, the affidavits and facts state that Taxpayer always intended to comply with all applicable U.S. federal income tax requirements in filing its tax returns for the tax year ending on Date C.

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 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.

Under Treas. Reg. § 301.9100-1(b), an election includes an application for relief

in respect of tax and the subject of this ruling request qualifies as an application for relief. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time to attach to its U.S. income tax return for the tax year ended on Date C as provided under Treas. Reg. § 1.1503-2(g)(2)(vii)(B) and (C), provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 45 days from the date of this ruling letter to attach to its U.S. income tax return for year ended on Date C the documentation required under Treas. Reg. § 1.1503-2(g)(2)(vii)(B) and (C).

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to attach the documentation to its tax return for the tax year ended on Date C. Treas. Reg. § 301.9100-1(a). Specifically, this ruling is not a determination as to whether Taxpayer has demonstrated that the amount of the income that must be recaptured under Treas. Reg. § 1.1503-2(g)(2)(vii)(A) should be reduced pursuant to Treas. Reg. § 1.1503-2(g)(2)(vii)(B) and (C). This determination will be made by the office of the industry director having examination jurisdiction over the tax return for the tax year at issue.

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.

A copy of this ruling letter should be associated with the documents.

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 letter is being furnished to your authorized representative.

Sincerely,

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

cc:

Enclosure:  
Copy for 6110 purposes