

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL

PLR-104689-05

Date:

July 25, 2005

## LEGEND

Taxpayer =

Entity =

CPA Firm =

Year One =

Year Two =

Year Three =

Year Four =

Dear

This replies to your representative's letter dated January 17, 2005, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 to file the election and agreement described in §1.1503-2(g)(2)(i) for Years One, Two, and Three relating to the reporting of dual consolidated losses incurred by Entity in each of those tax years, and to file the annual certification described in §1.1503-2(g)(2)(vi)(B) for Years Two and Three. 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 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.

Entity is a “foreign branch” under Treas. Reg. §1.1503-2(c)(3)(i)(A) and a “hybrid entity separate unit” under §1.1503-2(c)(4). Entity incurred losses in Years One, Two, Three, and Four.

Taxpayer engaged CPA Firm to prepare its consolidated federal income tax returns for Years One, Two, and Three, including the preparation of elections and disclosures. Those tax returns did not include dual consolidated loss elections and annual certifications described in Treas. Reg. §1.1503-2(g)(2)(i) and (vi)(B), respectively.

During the process of preparing Taxpayer’s consolidated federal income tax return for Year Four, the CPA Firm tax engagement team discovered that the dual consolidated loss elections and annual certifications may have been necessary with respect to the losses of Entity incurred in Years One, Two, Three, and Four. CPA Firm, however, did not believe that the losses constituted dual consolidated losses. Given this uncertainty, CPA Firm had Taxpayer file an election statement for the losses incurred in Year Four with the federal income tax return for that tax year. In addition, Taxpayer included annual certifications to certify the losses incurred in Years One, Two, and Three.

After the tax return for Year Four was filed, the engagement team began a more comprehensive review and analysis of the dual consolidated loss issue. Subsequently, the engagement team concluded that dual consolidated loss elections and annual certifications were required with respect to the losses incurred by Entity in Years One, Two and Three. However, as stated above, the tax returns for those years, which were timely filed, did not include the required elections and annual certifications. CPA Firm then informed Taxpayer that such statements were not filed for the Year One, Two and Three losses.

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. §301.9100-1(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. §301.9100-3(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 and agreement and the annual certification described in Treas. Reg. §1.1503-2(g)(2)(i) and (vi)(B), respectively, 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 the rules set forth in Treas. Reg. §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election and agreement described in §1.1503-2(g)(2)(i) for Years One, Two, and Three relating to the reporting of dual consolidated losses incurred by Entity in each of those tax years, and to file the annual certification described in §1.1503-2(g)(2)(vi)(B) for Years Two and Three.

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

A copy of this ruling letter should be associated with the elections and agreements, and the annual 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.

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

Sincerely,

Associate Chief Counsel (International)

By: /s/ Richard L. Chewning

Richard L. Chewning

Senior Counsel

Office of the Associate Chief Counsel (International)

Enclosure:

Copy for 6110 purposes