

INTERNAL REVENUE SERVICE
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CC:INTL:PLR-112314-98

October 22, 1998

LEGEND

Taxpayer =

Domestic Subsidiaries =

Corp X =

Individual A =

Individual B =

Dear :

This replies to a letter dated June 9, 1998, supplemented by a letter dated September 9, 1998, requesting that Taxpayer be granted an extension of time under Treas. Reg. § 301.9100-3 to file the elections required by Treas. Reg. § 1.1503-2(g)(2) for the 1994-1996 net operating losses of the foreign-branch operations of Taxpayer's Domestic Subsidiaries listed on Exhibit A, which is incorporated herein by reference. 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

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other data may be required as a part of the audit process.

The foreign branches of Taxpayer's Domestic Subsidiaries listed on Exhibit A constitute separate units as defined in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Each foreign branch that is subject to the income tax of a foreign country on its worldwide income or on a residence basis is therefore a dual resident corporation within the meaning of Treas. Reg. § 1.1503-2(c)(2). Each of the foreign branch operations of each Domestic Subsidiary constitutes a separate unit, non-hybrid entity, within the meaning of Treas. Reg. § 1.1503-2(c)(4). Since 1987, Taxpayer has used the net operating losses generated by its foreign-branch separate units to offset the income of other affiliates on its consolidated return. Taxpayer filed elections for the 1993 losses generated by the foreign-branch operations of the Domestic Subsidiaries, with the exception of Corp X which incurred a loss for the first time in 1995.

In 1994, Individual A, Taxpayer's Senior Tax Advisor and the employee responsible for preparing Taxpayer's elections, reviewed § 1.1503-2 and Taxpayer's policy with respect to filing the elections. As part of this review, Individual A considered the exception to the definition of "dual consolidated loss" contained in § 1.1503-2(c)(5). Based on this exception, Individual A concluded that Taxpayer was not required to file an election with respect to any loss incurred by a branch in a foreign country that prohibited consolidation with another person. Individual A discussed his interpretation with Individual B, Taxpayer's Tax Manager and Individual A's manager, who agreed with Individual A's conclusion. Accordingly, Taxpayer did not file elections with respect to any net operating losses generated by the foreign branches of the Domestic Subsidiaries listed in Exhibit A for the 1994-1996 tax years.

In connection with the acquisition of Taxpayer, Taxpayer gave permission to the acquiring corporation to examine Taxpayer's income tax returns and records. The examination disclosed that Taxpayer had not filed elections for the post-1993 losses of certain foreign branches. The acquiring corporation and Taxpayer agreed that Taxpayer's interpretation of the definition of a dual consolidated loss was inconsistent with the Service's interpretation. Although Taxpayer's 1994

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and 1995 years are currently under examination by the IRS, the IRS has not discovered Taxpayer's failure to make the elections with respect to the foreign branches post-1993 net operating losses.

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.

Treas. Reg. § 301.9100-3(b)(1) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer-- (i) Requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service.

In the present situation, § 1.1503-2(g)(2) fixes the time to file the elections. Therefore, the Commissioner has discretionary authority pursuant to § 301.9100-3 to grant Taxpayer an extension of time, provided that Taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts and circumstances of this case, we conclude that Taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Accordingly, Taxpayer is granted an extension of time under § 301.9100-3 until 30 days from the date of this ruling letter to file the elections required by § 1.1503-2(g)(2) for the 1994-1996 net operating losses of the foreign-branch operations of Taxpayer's Domestic Subsidiaries listed on Exhibit A.

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.

A copy of this ruling letter should be associated with the elections for the tax years at issue.

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This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(j)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel
(International)

By: _____

Allen Goldstein
Reviewer