

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:BR1:PLR-116079-98

Date:

November 18, 1998

In re:

LEGEND

Taxpayer =

Corp T =

Business Activity

Individual A =

CPA Firm =

Tax Years =

Dates A through F =

Dear

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This replies to a letter dated August 10, 1998, requesting that Taxpayer and its consolidated subsidiaries, including Corp T, be granted an extension of time under Treas. Reg. § 301.9100-3 to file the certification described in Treas. Reg. § 1.1503-2A(d)(3) for Tax Years #13; to replace the certification filed under Treas. Reg. § 1.1503-2A(d)(3) with the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i), as provided in Treas. Reg. § 1.1503-2(h)(2)(ii), for Tax Years #13; and to file the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) for Tax Years #14. Supplementary information was submitted in a letter dated September 17, 1998. 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 was audited by the Internal Revenue Service ("IRS") for the taxable years beginning on Date A and ending on Date B. The IRS report for Tax Year #1 and Tax Year #2 was finalized on Date C, and the report for Tax Years #3 through #5 was finalized on Date D. Taxpayer agreed to the report's findings and related adjustments for these years. The report for Tax Years #3 through #5 required all costs incurred by Corp T to be capitalized pursuant to I.R.C. § 263(i). The report stated that Tax Year #7 appeared to be the proper year for the abandonment loss deduction attributable to costs of the Business Activity not previously written off. As a result of the IRS audit adjustments, Taxpayer filed an amended return for Tax Year #7 on Date E, which was signed by CPA Firm as paid preparer. The amended return claimed an additional loss, which consisted of costs previously capitalized for Tax Years #3 through #5, costs capitalized by the I.R.S. in Tax Year #1 and additional capitalized costs that had not been previously written off for tax purposes. Subsequent to Tax Year #7, Taxpayer has only deducted the routine costs of the annual administration of the Business Activity.

On Date F, the IRS sent a notice of deficiency to Taxpayer assessing additional tax relative to Tax Years #7 through #10. The examination report in support of the notice of deficiency disallowed the losses by reason of the loss disallowance rules of § 1503(d).

For Tax Years #2 through #12, Taxpayer annually engaged CPA Firm, or its predecessor, to review and sign Taxpayer's Federal income tax return prior to filing with the IRS to insure compliance with tax laws and elections. Individual A, a partner in CPA

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Firm, states in an affidavit that CPA Firm inadvertently failed to advise Taxpayer in Tax Year #10, the year the amended return for Tax Year #7 was prepared (and on which these losses were deducted), or in subsequent years (Tax Years #8 through #11), when the routine costs were deducted on Taxpayer's originally filed returns, that elective relief under § 1.1503-2(g)(2) or § 1.1503-2A(d)(3) may be necessary to avoid having Corp T's losses disallowed by the IRS upon audit.

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-- (v) Reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

In the present situation, § 1.1503-2A(d)(3) fixes the time to file the certifications for Tax Years #13; § 1.1503-2(h)(2)(ii) fixes the time to replace the certifications filed under § 1.1503-2A(d)(3) with an agreement described in § 1.1503-2(g)(2)(i); and § 1.1503-2(g)(2)(i) fixes the time to file the agreement for Tax Years #14. 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 certification described in Treas. Reg. § 1.1503-2A(d)(3) for Tax Years #13; to replace the certification filed under Treas. Reg. § 1.1503-2A(d)(3) with the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i), as provided in Treas. Reg. § 1.1503-2(h)(2)(ii), for Tax Years #13; and to file the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) for Tax Years #14.

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 tax returns for the tax years at

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issue.

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 Taxpayer, and to the other authorized representative.

Sincerely,

Associate Chief Counsel
(International)

By: _____
Allen Goldstein
Reviewer