

**Internal Revenue Service**

Department of the Treasury

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April 13, 1999

**LEGEND**

Taxpayer

Foreign Entities

Y Entities

Foreign Country

Year One

Year Two

Date A

Date B

PLR-122539-98

Dear

This replies to a letter dated December 18, 1998, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) with respect to each of the Foreign Entities for Year One or Year Two, as the case may be, and, where appropriate, the annual certifications required by § 1.1503-2(g)(2)(vi)(B) with respect to the Foreign Entities other than the Y Entities. 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 is the common parent of an affiliated group of corporations as defined in I.R.C. § 1504(a). Taxpayer's Year One fiscal year ended on Date A. Taxpayer's Year Two fiscal year ended on Date B. Taxpayer included the losses of the Foreign Entities in the computation of its consolidated U.S. taxable income for Year One and Year Two. Taxpayer did not use the losses of these Foreign entities to offset the income of any other person under the income tax laws of a foreign country. Taxpayer's interests in all of the Foreign Entities (other than the Y Entities, which constitute partnerships for both Foreign and U.S. purposes) are separate entity hybrid units and separate units.

In 1998, Taxpayer's outside counsel became aware of Taxpayer's inadvertent failure to file the certification required by § 1.1503-2(g)(2) with respect to the Foreign entities for Year One and Year Two. Taxpayer's outside counsel discovered this failure in the course of performing some work in connection with these entities. The Service has not initiated an examination of Taxpayer's return for Year One or Year Two, and has not initiated any discussions regarding Taxpayer's failure to make the election under § 1.1503-2(g)(2) for Year One or Year Two.

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 § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

PLR-122539-98

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 § 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 under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service.

In the present situation, § 1.1503-2(g)(2)(i) fixes the time to file the agreement. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(b)(1). Accordingly, Taxpayer is granted an extension of time under Treas. Reg. § 301.9100-3 until 30 days from the date of this ruling letter to file the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) with respect to each of the Foreign Entities for Year One or Year Two, as the case may be, and, where appropriate, the annual certifications required by § 1.1503-2(g)(2)(vi)(B) with respect to the Foreign Entities other than the Y Entities.

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.

PLR-122539-98

A copy of this ruling letter should be associated with the agreement and certifications.

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 letter is being sent to the Taxpayer and the other authorized representative.

Sincerely,

/s/ Allen Goldstein

Allen Goldstein

Reviewer

Office of the Associate Chief Counsel (International)