

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-100611-99
Date:

June 30, 1999

In re:

LEGEND

Taxpayer =

DRCs =

Corporation X =

Year One =

Year Two =

Date A =

Date B =

Dear :

This replies to a letter dated December 30, 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) and required under § 1.1503-2(g)(2)(iv)(B)(2)(iii) with respect to dual consolidated losses incurred in tax years ended Year One and Year Two. Additional information was submitted in a letter dated May 11, 1999. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations

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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.

For the tax years ended Year One and Year Two, each of the dual resident corporations (“DRCs”) were direct or indirect wholly owned subsidiaries of Taxpayer, and joined together with Taxpayer and its other subsidiaries in the filing of a consolidated federal income tax return as members of the Corporation X consolidated group.

Corporation X is the common parent of an affiliated group of corporations (the “Corporation X Group”) that included Taxpayer and its DRCs for tax years that included the period between Date A and Date B. During this period, Corporation X owned all of the stock of Taxpayer. The DRCs incurred dual consolidated losses (“DCLs”) for the tax years ended Year One and Year Two, and these DCLs were used to offset income of other profitable companies in the Corporation X Group’s consolidated income tax return for the tax years ended Year One and Year Two. As a result of a non-taxable transaction occurring on the close of business on Year Two, Taxpayer and the DRCs were transferred outside the Corporation X Group.

As a result of the transfer outside the Corporation X Group, Taxpayer became the parent of a new affiliated group (“Taxpayer Group”) that began to file a consolidated federal income tax return. The Taxpayer Group included the DRCs. This transfer constituted a triggering event as described in § 1.1503-2(g)(2)(iii)(A)(2). However, Taxpayer failed to timely file the agreement described in §1.1503-2(g)(2)(i) and required under § 1.503-2(g)(2)(iv)(B)(2)(iii) in order for this transfer not to constitute a triggering event. Taxpayer’s failure to timely file the agreement has not been discovered by the Internal Revenue Service.

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.

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

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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.

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(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) and required under § 1.1503-2(g)(2)(iv)(B)(2)(iii) with respect to the DCLs incurred in tax years ended Year One and Year Two.

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 agreement.

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 other authorized representative.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)