

Internal Revenue Service

Department of the Treasury

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August 26, 1999

LEGEND

Taxpayer

Sub #1, #2, #3,

Entity #1, #2, #3

Date A, B, C

Dear

This replies to a letter dated February 23, 1999, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreement and certification described in § 1.1503-2(g)(2)(i) and (vi) for the fiscal year ending on Date A and for the short year ended on Date B. Supplementary information was submitted in letters dated June 24, 1999, and July 30, 1999. 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 indirectly owns Subs #1, #2, and #3, which are domestic corporations. Subs #1 and #2 each own 50 percent of Entity #1, which owned 50 percent of Entity #2 prior to Date C and 80 percent from Date C to the present. Sub #3 owns 50 percent

PLR: 104445-99

of Entity #3. Entity #1, #2, and #3 are each foreign entities treated as a partnership for U.S. federal income tax purposes.

Taxpayer made dual consolidated loss elections and filed annual certifications covering the losses generated by Entity #1, #2 and #3 for the tax years ended on Date A and on Date B that were included in the timely filed consolidated federal income tax return for Subs #1, #2, and #3.

Taxpayer's staff prepared the elections and annual certifications that were included in Taxpayer's consolidated return. However, the elections and annual certifications were completed in the name of the U.S. company owning the foreign entity instead of being completed in the name of the foreign entity constituting the dual consolidated loss entity. Also, the agreement to comply with all of the provisions of § 1.1503-2(g)(2)(iii) through (vii) should have been made by Taxpayer but was not. In addition, Taxpayer intended to make elections and file the annual certifications for the tax year ended on Date B but inadvertently submitted copies of the improperly completed elections and annual certifications made for the tax year ended on Date A. Taxpayer's failure to properly file the dual consolidated loss elections has not been discovered by the IRS.

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 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) and (vi) fixes the time to file the agreement and annual certification. 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).

PLR: 104445-99

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies the standards of § 301.9100-3. Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the agreement and certification described in § 1.1503-2(g)(2)(i) and (vi) for the tax years ended on Dates A and B.

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 agreements 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 your authorized representatives.

Sincerely,

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