



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR CHIEF, EXAMINATION BRANCH
CONNECTICUT-RHODE ISLAND DISTRICT

FROM: Michael Frankel
Assistant to the Branch Chief CC:INTL:BR4

SUBJECT: Treas. Reg. § 1.1503-2(g)(2)(iii)

This Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A: =

B: =

Country 1 =

Date 1 =

DISCUSSION:

A filed a request for ruling that was subsequently withdrawn. We understand that A's representative has informed your office that A will be filing an amended federal income tax return for its taxable year ending Date 1 whereby the loss incurred by B will not be utilized to offset the income of another member of the A consolidated return group for that taxable year or for any other taxable year.

B is incorporated in Country 1. B has elected to be treated as a domestic corporation pursuant to section 953(d) of the Code.

Section 953(d)(3), as amended by the Omnibus Budget Reconciliation Act of 1989, provides, "If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof."

Section 1503(d)(1) provides, "The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year."

Section 1503(d)(2)(B) provides "To the extent provided in regulations, the term "dual consolidated loss" shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation."

Treas. Reg. § 1.1503-2(g)(2)(i) provides that the prohibition on use of a dual consolidated loss to offset the income of a member of the consolidated return group will not apply if the consolidated group elects to be bound by the provisions of Treas. Reg. § 1.1503-2(g)(2). This election was promulgated pursuant to section 1503(d)(2)(B).

Because any loss of a corporation which has elected to be treated as a domestic corporation under section 953(d) will be treated as a dual consolidated loss without regard to section 1503(d)(2)(B), an election, pursuant to Treas. Reg. § 1.1503-2(g)(2)(i), may not be made with respect to any loss incurred by B. Thus, a loss incurred by B may not be utilized in a federal consolidated income tax return to offset the income of any other member of the A consolidated return group.

Accordingly, we believe it is appropriate for A to file an amended federal income tax return for its taxable year ending Date 1 whereby the loss incurred by B will not be utilized to offset the income of any other member of the A consolidated return group for that taxable year or any other taxable year.

We are sending this to you so that your office may take appropriate action.

If you have any further questions , please call 202-622-3860.