

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

June 11, 2001

LEGEND

- Taxpayer =
- Corporation X =
- Entity =
- Corporation Y =
- Date One =
- Date Two =

Dear :

This replies to a letter dated November 3, 2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file a corrected annual certification described in § 1.1503-2(g)(2)(vi) for the tax year ended on Date Two to include a certification of the dual consolidated loss incurred by Entity in the tax year ended on Date One. Additional information was submitted in a letter dated May 1, 2001. 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 parent of a consolidated group which included Corporation X. Corporation X is the parent of Entity, and Entity incurred dual consolidated losses in the tax years ended on Dates One and Two. In each tax year, Taxpayer timely filed an election under § 1.1503-2(g)(2).

About three months after the close of the tax year ended on Date Two, Corporation Y acquired Corporation X, including Entity. This acquisition resulted in Entity ceasing to be a member of Taxpayer's consolidated group. In order to avoid the recapture of the

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previously claimed dual consolidated losses of Entity, Taxpayer filed a closing agreement with the Internal Revenue Service. In reviewing the closing agreement, the Service notified Taxpayer that the election under § 1.1503-2(g)(2)(i) filed with respect to the dual consolidated loss incurred in the tax year ended on Date Two failed to certify the dual consolidated loss incurred in the tax year ended on Date One as required by § 1.1503-2(g)(2)(vi).

The failure to certify the dual consolidated loss with respect to the tax year ended on Date One was due to the fact that the employee responsible for certifying the loss left the Tax Department of Corporation X before Taxpayer filed its tax return for the tax year ended on Date Two. Also, in months prior to the acquisition of Corporation X by Corporation Y, Corporation Y's Tax Department underwent significant staff reductions as a result of the company's restructuring plan. As a result of the acquisition of Corporation X, together with acquisitions of two additional publicly held corporations a week later, Corporation Y's tax resources were stretched thin.

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. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time under the rules 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. § 301.9100-3(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, the annual certification is a regulatory election as defined in § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in § 301.9100-3(a).

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 a corrected annual certification described in § 1.1503-2(g)(2)(vi) for the tax year ended on Date Two to include a certification of the dual consolidated loss incurred by Entity in the tax year ended on Date One.

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The granting of an extension of time to file the annual certification is not a determination that Taxpayer is otherwise eligible to file the annual certification. 301.9100 -1(a).

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 annual certification.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(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,

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