

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:INTL – PLR-159915-02

Date:

November 04, 2003

**LEGEND**

Taxpayer =

Entity =

Tax years 1, 2, 3, 4 =

In-house tax manager =

Outside tax advisor =

Dear :

This replies to a letter dated October 28, 2002, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file an agreement described in § 1.1503-2(g)(2)(i) for each dual consolidated loss incurred by Entity in tax years 1, 2, 3 and 4; and to file a separate annual certification described in § 1.1503-2(g)(2)(iv)(B) for tax years 2, 3 and 4 with respect to the dual consolidated loss incurred in the previous taxable year, or years. 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.

In re: PLR-159915-02

The affidavits of the in-house tax manager and the outside tax advisor, and the facts submitted describe the circumstances that led to the discovery that Taxpayer failed to file the agreements and annual certifications for the tax years at issue. The affidavits and facts indicate that the outside tax advisor did not advise the in-house tax manager of the requirements to file the agreements and annual certifications because the outside tax advisor was not aware of the dual consolidated loss rules or the requirements to file the agreements and annual certifications.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and 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 agreement and annual certification described in § 1.1503-2(g)(2) are each 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 information submitted, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 45 days from the date of this ruling letter to file an agreement described in § 1.1503-2(g)(2)(i) for each dual consolidated loss incurred by Entity in tax years 1, 2, 3 and 4; and to file a separate annual certification described in § 1.1503-2(g)(2)(iv)(B) for tax years 2, 3 and 4 with respect to the dual consolidated loss incurred in the previous taxable year, or years.

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

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

In re: PLR-159915-02

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.

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.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Associate Chief Counsel (International)

By:  
Allen Goldstein  
Reviewer

Enclosure:

Copy for 6110 purposes