

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-115645-05
Date:
February 09, 2006

LEGEND

- Taxpayer =
- Tax Year =
- 1
- Tax Year =
- 2
- Tax Year =
- 3
- HSEU X =

Dear :

This replies to your representative’s letter dated March 16, 2005, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 for Taxpayer to file the election and agreement described in §1.1503-2(g)(2)(i), and the annual certifications described in §§1.1503-2(g)(2)(vi)(B) and 1.1503-2T(g)(2)(vi)(B) in accordance with Schedules A, B, and C which are attached to and made a part of this ruling letter. Additional information was submitted on October 13, 2005, December 14, 2005, January 11, 2006, and January 30, 2006. 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 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.

The facts and affidavits submitted indicate that Taxpayer's tax department prepared its consolidated federal income tax returns for the years for which Taxpayer requests relief. During that time, Taxpayer's tax department underwent significant personnel changes. In addition, the tax department was consistently short-staffed. This situation contributed to and resulted in the inconsistent application in those years of Treas. Reg. §§1.1503-2 and 1.1503-2T, the dual consolidated loss ("DCL") regulations. For example, Taxpayer failed to file required elections for foreign branches and hybrid entity separate units with respect to their DCLs in years indicated on Schedules A, B, and C. In addition, Taxpayer failed to file the required annual certifications for prior year DCLs with respect to the hybrid entity separate units as indicated on Schedules B and C. Thus, Taxpayer's tax department was unaware that each such failure was a triggering event that would cause recapture of the previously deducted DCL under §1.1503-2(g)(2)(iii)(8).

During Tax Year 3, under the direction of managers and staff who joined the tax department, Taxpayer's tax department undertook a review of the DCL rules and Taxpayer's compliance with those rules in order to file its consolidated federal income tax return for Tax Year 2. This review led to the discovery of the missed elections and annual certifications, and alerted the tax department to the related triggering events caused by the failure to file the elections and annual certifications.

Taxpayer represents that it filed this application for relief before the Internal Revenue Service discovered the failure to file the elections and agreements and the annual certifications with respect to the DCLs of the foreign branches and hybrid entity separate units for the tax years listed on Schedules A, B, and C.

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. §301.9100-1(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. §301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides 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 within the meaning of §301.9100-3(b), subject to the conditions set forth in §301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of §301.9100-3(c).

In the present situation, the election and agreement described in Treas. Reg. §1.1503-2(g)(2)(i) and the annual certifications described in §§1.1503-2(g)(2)(vi)(B) and 1.1503-

2T(g)(2)(vi)(B) are regulatory elections 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 representations submitted, we conclude that Taxpayer satisfies the standards for relief as set forth in Treas. Reg. §301.9100-3. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter for Taxpayer to file the election and agreement described in §1.1503-2(g)(2)(i) and the annual certifications described in §§1.1503-2(g)(2)(vi)(B) and 1.1503-2T(g)(2)(vi)(B) in accordance with Schedules A, B, and C.

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

The granting of this extension does not relieve Taxpayer from the requirement that it recapture, because of a triggering event under Treas. Reg. §1.1503-2(g)(2)(iii), the previously deducted DCLs of HSEU X on its consolidated federal income tax return for Tax Year 1.

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

This ruling is directed only to 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 representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Richard L. Chewning
Richard L. Chewning
Senior Counsel
Office of the Associate Chief Counsel
(International)

Enclosures:
Schedules A, B and C
Copy for 6110 purposes

SCHEDULE C

a = Election and agreement described in Treas. Reg. §1.1503-2(g)(2)(i).
b = Annual certification described in Treas. Reg. §1.1503-2(g)(2)(vi)(B).
c = Annual certification described in Treas. Reg. §1.1503-2T(g)(2)(vi)(B).
na = Not applicable

LEGEND