

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-133457-05

Date:

March 02, 2006

Legend

Taxpayer 1

Taxpayer 2

X

Y

Tax Advisor

Individual A

Individual B

Year 1

Year 2

Year 3

Year 4

Year 5

Date C

Dear _____ :

This replies to your representative's letter dated June 3, 2005, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to attach to an amended federal income tax return for Year 5, the documentation required under Treas. Reg. § 1.1503-2(g)(2)(iii)(B) to rebut the presumption that the sale of X and Y constituted a triggering event within the meaning of Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(2). Since the letter dated November 28, 2005 contained errors, this ruling letter revokes and replaces the November 28, 2005 letter. The information submitted for consideration is substantially as set forth below.

Taxpayer was the parent corporation of a group of entities filing Federal consolidated income tax returns for Year 1 through Date C. On Date C, Taxpayer 2 acquired Taxpayer 1 in a transaction that constituted a triggering event under Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(2). In order to be excepted from recapture of dual consolidated losses, Taxpayer 1 and Taxpayer 2 timely filed a request to enter into a closing agreement pursuant to Treas. Reg. § 1.1503-2(g)(2)(iv)(B).

While preparing the request for the closing agreement, outside Tax Advisor discovered that certain elections and certifications relating to dual consolidated losses were not filed or were incorrectly filed. A private letter ruling was requested under Treas. Reg. § 301.9100-1 and 3 to permit Taxpayer 1 to file the applicable elections and certifications. In a ruling letter dated August 9, 2005, the Service granted Taxpayer 1's request for an extension of time to file the (g)(2) elections and annual certifications with respect to X and Y for Year 1, Year 2, Year 3, Year 4, and Year 5.

During the process of gathering information related to the request for a closing agreement the IRS inquired whether documentation to rebut the presumption that the sale of X and Y in Year 5 was a triggering event. According to an affidavit submitted by Individual A, who has worked for the predecessor of Taxpayer 1 and currently works for Taxpayer 1, upon reviewing the documentation, Individual A became aware that the required rebuttal information had not been submitted by Individual B, who works for Tax Advisor. Taxpayer 1 was promptly advised to request relief under Treas. Reg. § 301.9100-1 and 3 to file an amended return for Year 5 attaching the required rebuttal documentation.

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 Treas. Reg. § 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 the evidence (including affidavits described in Treas. Reg. § 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 requirement in Treas. Reg. § 1.1503-2(g)(2)(iii)(B) that a taxpayer must submit contemporaneous documentation to rebut the presumption that an asset transfer was a triggering event 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 information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to attach to its U.S. income tax return for Year 5, the documentation required under Treas. Reg. § 1.1503-2(g)(2)(iii)(B) to rebut the presumption that the sale of X and Y in Year 5 constituted a triggering event within the meaning of Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(4).

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 this request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the rebuttal documents. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be associated with the rebuttal documents.

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 representative.

Sincerely,

Steven A. Musher
Acting Associate Chief Counsel (International)

By: _____
Thomas D. Beem, Senior Technical Reviewer, Branch 4
Office of Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: