



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
September 27, 1999

Number: **200001007**

Release Date: 1/7/2000

CC:INTL:Br.5
PLR-106091-99

UILC: 367.40-02
381.01-00
864.02-07

INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL
ADVICE

MEMORANDUM FOR DISTRICT DIRECTOR

Manhattan District

Attn: Chief, Examination Division

FROM: Paul S. Epstein
Senior Technical Reviewer CC:INTL:Br5

SUBJECT: Corp. A
Letter Ruling Request Withdrawn

This Chief Counsel Advice is issued pursuant to section 8.07(2)(b) of Revenue Procedure 99-1, 1999-1 I.R.B. 6, 34. Chief Counsel advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

LEGEND:

Corp. A	=
Sub. 1	=
X	=

Country A	=
Year 1	=
Date 1	=
a	=
b	=
c	=
Business X	=

PURPOSE:

By letter dated March 2, 1999, a taxpayer within your district submitted a private letter ruling request to our office regarding the use of the net operating loss carryovers of a former subsidiary by the taxpayer's U.S. branch. Upon being notified of our adverse position, the taxpayer withdrew its request by a letter dated August 30, 1999. Pursuant to section 8.07(2)(b) of Revenue Procedure 99-1, 1999-1 I.R.B. 6, 34, we hereby inform you of the taxpayer's withdrawal of its request for the letter ruling. In addition, this memorandum states our views of the issues raised by the taxpayer's request.

FACTS:

The taxpayer, Corp. A, EIN X, is a Country A corporation that has a U.S. branch through which it earns U.S. effectively connected income ("ECI"). Corp. A owned all the shares of Sub. 1, a U.S. corporation engaged in the U.S. in the business of making business and term loans to third party individuals and businesses such as Business X. Sub. 1's business was unprofitable, and the company had \$a in NOL carryovers. In Year 1 Sub. 1 sold virtually all its assets and on Date 1, Sub. 1 liquidated into Corp. A. At the time of liquidation, Sub. 1's assets consisted of \$b in cash and \$c in loans.

Corp. A sought several related rulings to the effect that the liquidation satisfied the requirements of section 367(e). The taxpayer also sought a ruling to the effect that, subsequent to the liquidation, Sub. 1's net operating loss carryover could be allocated in its entirety to Corp. A's U.S. effectively connected income under section 381.

LAW AND ANALYSIS:

As an initial matter, we concluded that the ruling requests involving section 367(e) were not necessary to taxpayer as Sub. 1 was holding only cash and property in which it chose to recognize gains as a result of the liquidation. The ruling requests' ultimate purpose was to secure the use of Sub. 1's NOL carryovers for use by Corp. A's U.S. trade or business. However, the application of section 381, which concerns the carryover of tax attributes in a section 332 liquidation, is not dependent on the application of section 367(e). Consequently, because the utilization of Sub. 1's net operating losses by Corp. A against its U.S. effectively connected income did not depend on whether Sub. 1 satisfied the requirements of section 367(e), we declined to rule on these ruling requests.

With respect to the last ruling request, we noted that there is no authority on which the taxpayer could rely to allocate the subsidiary's NOLs to its own U.S. effectively connected income. In particular, we concluded that the Code and regulations do not prescribe or suggest a per se rule to allocate net operating loss carryovers in a Section 381 transaction to a distributee's effectively connected income solely because the net operating losses were generated by a U.S. subsidiary's U.S. based trade or business. Section 381 merely provides for the attribution of NOLs to the parent, but is silent on the allocation of such NOLs to any particular business of the parent.

In evaluating taxpayer's request, we considered the following factors:

(1) the taxpayer is not similarly situated to a U.S. taxpayer with respect to its ownership of Sub. 1 stock in that the stock of the subsidiary was not effectively connected to a U.S. trade or business in taxpayer's hands (*i.e.*, would not generate ECI if sold, in contrast to a U.S. parent corporation which would be taxed on a stock sale);

(2) Sub. 1's business had been sold prior to the liquidation and thus none of the liquidated assets would be used by the taxpayer in a U.S. trade or business; and

(3) Corp. A's U.S. office will not be a material factor in the realization of income with respect to the money or property received and the requirements

of either the asset use or the business activities tests under section 864(c)(2) are not met.

We thus concluded that the NOL carryover is to be treated as non-effectively connected in its entirety. We notified the taxpayer that we had reached an adverse conclusion on this issue, and the taxpayer withdrew its ruling request.

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS:

The legitimacy of the NOLs, and specifically whether they were generated by transactions between the taxpayer and its subsidiary, was not the subject of any ruling request. A ruling by the Service would have specifically stated that no opinion is expressed on this point.

If you have any further questions please call (202) 622-3870.

PAUL EPSTEIN
Senior Technical Reviewer
Office of Associate Chief Counsel
(International)

cc: Dennis Lapiotis, Large Case Manager, Exam, Manhattan District
Vincent Guiliano, Manhattan District Counsel