

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-128512-02

Date:

February 13, 2003

In re:

LEGEND

Taxpayer =

Entity =

Affiliate =

Corp A =

Dates 1, 2, 3 =

Individual A =

Individual B =

CPA Firm =

Dear :

This replies to a letter dated May 20, 2002, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file agreements required under § 1.1503-2(g)(2)(i) as follows: (i) to permit the inclusion of Entity's loss in the Corp A consolidated tax return for the tax year ended on Date 1; (ii) to permit the inclusion of Entity's loss in Taxpayer's consolidated tax return for the tax years ended on Dates 2 and 3; and to file annual certifications under § 1.1503-2(g)(2)(vi) as follows: (iii) for the tax year ended on

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Date 2 with respect to Entity's loss incurred in the tax year ended on Date 1; and (iv) for the tax year ended on Date 3 with respect to Entity's loss incurred in the tax years ended on Dates 1 and 2. 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.

An election was filed under § 301.7701-3(c) to treat Entity as a disregarded entity for U.S. income tax purposes as of the date of its formation, which was during the tax year ended on Date 1. Taxpayer owns 80% of Affiliate, a domestic corporation. Taxpayer and Affiliate filed consolidated tax returns for the tax years ended on Dates 1, 2, and 3. The Date 1 consolidated tax return was filed under the name of Corp A and Subsidiaries. During the tax year ended on Date 2, Corp A changed its name to Taxpayer. The consolidated tax returns for the tax years ended on Dates 2 and 3 were filed under the name of Taxpayer and Subsidiaries.

Individual A is the vice president of finance of Taxpayer and in that capacity acts on behalf of Taxpayer with respect to tax matters. Individual B is a partner with CPA Firm and was responsible for coordinating all tax services to be provided as requested to Taxpayer, including advice related to the dual consolidated loss relief elections. However, CPA Firm failed to advise Individual A of the filing requirements for the dual consolidated loss relief elections and the related annual certifications with respect to the tax years at issue.

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.

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In the present situation, § 1.1503-2(g)(2) fixes the time to file the agreements and the annual certifications. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant an extension of time to Taxpayer, provided that the standards set forth in § 301.9100-3(a) are satisfied.

Based on the facts and circumstances of this case, we conclude that the standards set forth in § 301.9100-3(a) have been satisfied. Accordingly, an extension of time until 30 days from the date of this ruling letter is granted to Taxpayer under § 301.9100-1 and § 301.9100-3 to file agreements required under § 1.1503-2(g)(2)(i) as follows: (i) to permit the inclusion of Entity's loss in the Corp A consolidated tax return for the tax year ended on Date 1; (ii) to permit the inclusion of Entity's loss in Taxpayer's consolidated tax return for the tax years ended on Dates 2 and 3; and to file annual certifications under § 1.1503-2(g)(2)(vi) as follows: (iii) for the tax year ended on Date 2 with respect to Entity's loss incurred in the tax year ended on Date 1; and (iv) for the tax year ended on Date 3 with respect to Entity's loss incurred in the tax years ended on Dates 1 and 2.

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

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.

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

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 letter ruling is being sent to Taxpayer and to the other representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein
Allen Goldstein
Reviewer