

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:

January 7, 2000

LEGEND

Taxpayer =

FB =

Country Y =

Date A =

Date B =

Date C =

Date D =

Date E =

Individual A =

External Auditor =

Dear :

This replies to your letter dated June 11, 1999, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreements and certifications described in § 1.1503-2(g)(2) for the losses incurred by FB for the fiscal years ending on Dates B through E. 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

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data may be required as a part of the audit process.

Taxpayer indirectly owns FB which began operations in Country Y on Date A. FB incurred losses for the fiscal years ending on Dates B through E and these losses were included in Taxpayer's consolidated income tax returns.

Individual A is Taxpayer's Director, International Taxes. As Director, International Taxes, Individual A is responsible for all international tax planning and compliance for Taxpayer and its subsidiaries. Individual A is also responsible for foreign tax audits and international aspects of U.S. tax audits.

In filing the Date B U.S. consolidated tax return for Taxpayer, Individual A reviewed I.R.C. 1503(d)(2)(B) and the regulations thereunder and came to the conclusion that FB did not have a dual consolidated loss as defined in § 1.1503-2(c)(5). Accordingly, no elections under § 1.1503-2(g)(2) were filed for the losses incurred by FB for the fiscal years ending on Dates B through E.

Later, Taxpayer's External Auditor reviewed the Country Y operations and provided advice regarding the application of the dual consolidation loss regulations. After reviewing this advice it was determined that Individual A's interpretation of the definition of a dual consolidated loss was inconsistent with the Service's interpretation. Individual A agreed that FB did in fact have a dual consolidated loss.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards 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) 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 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

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 agreement and certification. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the agreements and certifications described in § 1.1503-2(g)(2) for the losses incurred by FB for the fiscal years ending on Dates B through E.

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.

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

Sincerely,

Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)