

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR:115624-99

Date:

April 11, 2000

In re:

### LEGEND

Taxpayer =

Entity =

Foreign City =

CPA Firm =

Individual A =

Date A =

Date B =

Dear :

This replies to a letter dated September 20, 1999, forwarding Taxpayer's request for an extension of time under Treas. Reg. § 301.9100-3 to file the agreement and certifications described in § 1.1503-2(g)(2) for the taxable years ended on Dates A and B. 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.

During the tax years at issue, Taxpayer operated in the non-U.S. market through Entity, a wholly-owned U.S. subsidiary, from an office in Foreign City. Entity is represented to be a separate unit described in § 1.1503-2(c)(3)(A) and § 1.367(a)-6T(g).

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Individual A is a partner in CPA Firm and states that Taxpayer engaged CPA Firm to prepare the U.S. federal consolidated income tax return and all applicable elections and statements for Taxpayer and its subsidiaries for the taxable year ended on Date A. Individual A further states that the taxable loss incurred by Entity was included in the U.S. tax return of Taxpayer for the taxable year ended on Date A and that the omission of the election pursuant to § 1.1503-2(g)(2) was an oversight.

During the taxable year ended on Date B, Taxpayer did not experience any transactions which it considered were of a complex or unusual nature, as compared with the transactions in the prior calendar year. Therefore, as the results of its operations were consistent with the prior year, Taxpayer prepared its own tax return for the tax year ended on Date B, using the federal tax return for the prior year as prepared by CPA Firm as a guideline and checklist for the necessary elections and statements. As CPA Firm had included Entity's loss in the calculation of the U.S. consolidated net operating loss in the federal tax return for the prior year but failed to make and advise Taxpayer to make the necessary elections and certifications, Taxpayer was unaware of the necessity to make the elections and certifications in its federal tax return for the taxable year ended on Date B. Taxpayer is applying for relief before the failure to make the elections is discovered by the IRS.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner may grant a taxpayer a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I under the standards set forth in § 301.9100-3

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.

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.

In the present situation, § 1.1503-2(g)(2) fixes the time to file the agreement and certifications. 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).

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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 agreement and certifications described in § 1.1503-2(g)(2) for the taxable years ended on Dates A and B. The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election. § 301.9100-1(a).

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 letter is being sent to Taxpayer.

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