

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-100473-99
Date:
May 17, 1999

LEGEND

Taxpayer	=
Foreign Entity	=
Foreign Country	=
Year One	=
Year Two	=

Dear :

This replies to a letter dated December 30, 1998, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreement described in Treas. Reg. § 1.1503-2(g)(2) for its Year One tax year and the annual certification required by § 1.1503-2(g)(2)(vi)(B) for its Year Two tax year. 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.

Foreign Entity was organized in Year One and is a dual resident corporation as that term is defined in I.R.C. § 1503(d). In Year One, the Foreign Entity generated a loss,

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which loss did not and has not been used to offset the income of any other person under the income tax laws of Foreign Country or any other foreign country.

In Year One, Taxpayer obtained advice from its accountants to the effect that it should make the election under § 1503-2(g)(2) in connection with losses that were expected to be generated by the Foreign Entity in order to claim those losses against the income of the consolidated tax return group of which Taxpayer is the common parent. Taxpayer relied upon its then tax director to prepare and file the election and agreement under § 1.1503-2(g)(2) in accordance with the advice rendered to it by its accountants.

In the course of performing due diligence in connection with a possible acquisition, Taxpayer's current employees discovered that the election under § 1.1503-2(g)(2) had not been filed with its timely filed return for Year One. In reviewing its files, Taxpayer discovered that while its then tax director should have attached such an election to the Year One tax return of Taxpayer's consolidated tax return group, the tax director had inadvertently neglected to attach the election to Taxpayer's consolidated tax return. Taxpayer is submitting its ruling request before the failure to make the elections were discovered by the Service.

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

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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 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 agreement described in § 1.1503-2(g)(2) for its Year One tax year and the annual certification required by § 1.1503-2(g)(2)(vi)(B) for its Year Two tax year.

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 agreement and certification.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Allen Goldstein

Allen Goldstein

Reviewer

Office of the Associate Chief Counsel (International)