

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-104328-01

Date:

September 14, 2001

LEGEND

Parent =

Subsidiary =

Date 1, 2, 3 =

Individual A, B =

Dear :

This replies to a letter dated January 9, 2001, submitted by your authorized representative, in which Parent requests an extension of time under Treas. Reg. § 301.9100-3 to file the statement of election and agreement provided under § 1.1503-2(g)(2) with respect to the losses of Subsidiary incurred in tax years ended on Dates 1, 2 and 3. 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.

Parent is the common parent of a U.S. affiliated group that filed consolidated federal income tax returns for the tax years ended on Dates 1, 2, and 3. Parent wholly owns Subsidiary, and is one of the members of Parent's consolidated group (herein collectively referred to as "Parent"). The losses of Subsidiary for the tax years ended on Dates 1, 2 and 3 were included in the consolidated federal income tax return of Parent.

Individual A is the Chief Financial Officer of Parent, and Individual B is a partner in CPA Firm. The affidavits of Individuals A and B explain the reasons that led to the conclusion that Parent qualified for the exception to the dual consolidated loss

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provisions under § 1.1503-2(c)(5)(ii), and to Parent not electing the relief provisions of § 1.1503-2(g)(2) with respect to Subsidiary's losses for the tax years ended on Dates 1, 2 and 3. Subsequently, Individuals A and B learned that their conclusion was inconsistent with the position of the IRS that the losses of Subsidiary were subject to the dual consolidated loss rules.

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. § 301.9100-1(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.

In the present situation, § 1.1503-2(g)(2) fixes the time to file the statement of election and agreement. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Parent an extension of time, provided that Parent satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Parent satisfies § 301.9100-3(a). Accordingly, Parent is granted an extension of time until 30 days from the date of this ruling letter to file the statement of election and agreement provided under § 1.1503-2(g)(2) with respect to the losses of Subsidiary incurred in tax years ended on Dates 1, 2 and 3.

The granting of an extension of time is not a determination that Parent is otherwise eligible to file the statements of election and agreement. § 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.

A copy of this ruling letter should be associated with the statements of election and agreement.

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.

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Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

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