

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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LEGEND

Taxpayer =

Company X =

=

Individual A =

Individual B =

Dear:

This replies to a letter dated September 10, 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)(i) for the tax year ended December 31, 1995, for Company X. 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.

On October 31, 1995, Taxpayer formed Company X. Company X has a principal place of business in Foreign Country, and is taxed there and in the United States. Company X incurred losses for the 1995 tax year, which were consolidated into Taxpayer's 1995

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Federal tax return.

Individual A is the Tax Director/Assistant Treasurer of Taxpayer. Upon reviewing various business strategies for Company X, the Company X loss for the tax year ended December 31, 1995 came to the attention of Individual A. Because Company X was a dual resident corporation, Individual A had Individual B, the manager in charge of preparing the consolidated tax return for Taxpayer, to determine whether the consolidated loss election available under § 1.1503-2(g)(2) was made for Company X for the 1995 tax year. Individual B states in an affidavit that the § 1.1503-2(g)(2) election was not made due to an oversight on his part. This oversight was due to the fact that this was the first time that Individual B had experienced a situation involving a flow through entity with a dual consolidated loss issue. As such, it was not identified as part of the historical review process to determine § 1.1503-2(g)(2) elections. Individual A believed that upon signing Taxpayer's return that all necessary elections were included in the return since he relied on Individual B's professionalism in preparing the consolidated tax return for 1995.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant 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 -1(b) provides that a regulatory election means an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301-9100-3 provides rules 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.

Treas. Reg. § 301.9100-3(b)(1) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer-- (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

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

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

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(b)(1)(v). 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)(i) for the taxable year ended December 31, 1995 for Company X.

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.

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.

Sincerely,

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