

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-137110-03

Date:
September 09, 2004

In Re:

LEGEND

Taxpayer	=	
Branch	=	
Individual A	=	
Individual B	=	
Individual C	=	
Date One	=	
CPA Firm A	=	
CPA Firm B	=	
CPA Firm C	=	

Dear :

This replies to a letter dated June 9, 2003, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the election and agreement described in §1.1503-2(g)(2)(i) with respect to the dual consolidated loss incurred by Branch in the tax year ended on Date One. 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.

The affidavit of Individual A, an officer of Taxpayer, indicates that Taxpayer has no tax department. Individual A had the responsibility to ensure that Taxpayer's federal tax returns were filed on a timely basis, even though Individual A was not a tax specialist. Individual A was not aware of the concept of dual consolidated losses, and the corresponding requirement to file an election and agreement under § 1.1503-2(g)(2) in order to deduct the losses of Branch on Taxpayer's U.S. consolidated tax return for the tax year ended on Date One.

Individual B is a senior tax manager at CPA Firm A. The affidavit of Individual B indicates that Individual B had the responsibility to review all aspects of Taxpayer's tax return. Individual B was involved in the preparation and review of the consolidated tax return for the tax year ended on Date One. Individual B knew of the loss incurred by Branch, however, Individual B did not realize that the loss was a dual consolidated loss that would require the filing of an election in order to take the loss into account on Taxpayer's tax return.

Individual C is a partner in CPA Firm B. The affidavit of Individual C indicates that for many years, Individual C was the partner with primary responsibility for providing tax services to Taxpayer. Subsequent to the tax year ended on Date One, Taxpayer engaged CPA Firm B to prepare certain tax forms, and to review tax forms prepared by another firm. Taxpayer intended to attach these tax forms to its tax return for the tax year ended on Date One. However, Taxpayer did not request advice from CPA Firm B regarding the potential application of the dual consolidated loss rules to Taxpayer or the need for Taxpayer to make elections under § 1.1503-2(g)(2), and CPA Firm B did not provide such advice to Taxpayer.

Subsequently, Taxpayer engaged CPA Firm C to provide Taxpayer with certain tax planning advice. In reviewing the tax return for the tax year ended on Date One, CPA Firm C discovered the missed election statement.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and 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 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 within the meaning of § 301.9100-3(b), subject to the conditions set forth in § 301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of § 301.9100-3(c).

In the present situation, the election and agreement described in § 1.1503-2(g)(2)(i) is a regulatory election as defined in § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief as set forth in § 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 45 days from the date of this ruling letter to file the election and agreement described in § 1.1503-2(g)(2)(i) with respect to the dual consolidated loss incurred by Branch in the tax year ended on Date One.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election and agreement. § 301.9100-1(a).

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

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 ruling letter is being furnished to Taxpayer, and to the other authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein

Allen Goldstein

Reviewer

Enclosure:

Copy for 6110 purposes