

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Refer Reply To:

CC:INTL

PLR-124839-02

Date:

September 14, 2004

In Re:

**LEGEND**

Taxpayer =

Corp A =

Corp B =

Corp C =

Corp D =

Entity =

Group A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Individual A =

Foreign =

Country

Dear :

This replies to a letter dated April 23, 2002, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the annual certifications described in §1.1503-2(g)(2)(vi)(B) for the tax years ended on Dates 1, 2 and 3, including certifications from Corp D, as the owner of Entity, concerning the use of Corp B's distributive share of Entity's losses ("Corp D certification") for the tax years ended on Dates 1, 2 and 3. Additional information was submitted in letters dated June 23, 2003, June 26, 2003, July 16, 2003, and February 12, 2004, by electronic transmission on

July 7, 2004, July 19, 2004, and August 3, 2004, and by hand-delivery on August 3, 2004. 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.

Prior to Date 4, Corp A was the common parent of Group A, which included Corp B.

Corp B and Corp C held partnership interests in Entity. Corp C was a subsidiary of Corp D, and Corp D was unrelated to Corp A or Corp B.

On Date 4, Corp A merged into a wholly owned subsidiary of Taxpayer. The merger caused Corp B to cease to be a member of Group A. The day after Date 4, Corp B sold its partnership interest in Entity to Corp D, which was pursuant to an agreement entered into by the parties prior to Date 4. Corp B's cessation of membership in Group A and the sale of the partnership interest constituted triggering events under § 1.1503-2(g)(2)(iii). Taxpayer and Corp A entered into a closing agreement with the Service as provided by § 1.1503-2(g)(2)(iv)(B)(2)(i) so that the merger transaction of Corp A into a wholly owned subsidiary of Taxpayer and the sale of the partnership interest would not constitute triggering events requiring the recapture of dual consolidated losses under § 1.1503-2(g)(2)(vii).

Under paragraph 5 of the closing agreement, Taxpayer was required, for a 15-year period, to obtain a Corp D certification, and to timely submit such certification with the filings required to meet the reporting requirements described in Treas. Reg. § 1.1503-2(g)(2)(vi).

Taxpayer failed to timely and properly file its annual certifications that required annual certifications from Corp D to be attached for the tax years ended on Dates 1, 2 and 3 as set forth in the closing agreement.

Individual A is the director of income taxes for Taxpayer, and was responsible for overseeing the preparation of the consolidated income tax return of Taxpayer and its affiliated group of taxpayers. The affidavit of Individual A and the facts submitted describe the circumstances that led to the discovery of and the reasons for the failure to file these certifications. The affidavit and facts show that Taxpayer relied upon its director of income taxes to file the certifications on a timely basis.

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 annual certification described in § 1.1503-2(g)(2)(vi) 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.

Treas. Reg. 1.1503-2(g)(2)(vi)(B) provides, in general, that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss.

Based on the facts and information submitted, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time to file the annual certifications described in § 1.1503-2(g)(2)(vi)(B) for the tax years ended on Dates 1, 2, and 3, including the Corp D certifications for those tax years. The Corp D certifications for the tax years ended on Dates 1, 2 and 3 must be submitted with Taxpayer's annual certifications described in § 1.1503-2(g)(2)(vi)(B) for the tax years ended on Dates 1, 2, and 3 to demonstrate that Corp B's distributive share of Entity's losses, expenses, or deductions cannot be carried over or otherwise used by any person or entity, other than Entity, under the tax laws of the Foreign Country.

The extension of time granted by this letter ruling to Taxpayer to properly file Taxpayer's annual certifications, together with the Corp D certifications, for the tax years ended on Dates 1, 2 and 3 is extended to 45 days from the date of this ruling letter.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file Taxpayer's annual certifications or the Corp D certifications. § 301.9100-1(a). Further, the granting of an extension of time in this instance should not be taken as an indication that if there are future omissions of the required certifications under the closing agreement or the regulations referred to therein that relief will be granted under § 301.9100-3.

A copy of this ruling letter should be associated with Taxpayer's annual certifications and the Corp D certifications.

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 the Taxpayer.

Sincerely,

/s/ Harry J. Hicks, III  
Harry J. Hicks, III  
Associate Chief Counsel (International)

Enclosure  
Copy for 6110 purposes