

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

December 18, 2000

LEGEND

Taxpayer =
Shareholder =
Year X =
Date A =
Date B =
Individual A =

Dear :

This replies to a letter dated May 31,2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to Date B to file an election under § 1.884-2T(d)(4)(i) to increase its earnings and profits by the allocable amount of the earnings and profits of Shareholder as determined under § 1.884-2T(d)(4)(ii). 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 facts state that Individual A timely filed an application for extension on Form 7004 that extended the due date for Taxpayer's Year X tax return to Date A. In the press of business, Individual A did not complete preparing Taxpayer's return by Date A, and filed a request for an additional one-month extension on that date not realizing that the IRS had no authority to grant an additional extension of time. After it was discovered that the election statement was not timely filed, the election statement was subsequently filed with the Taxpayer's Year X tax return on Date B. This request for relief is being made before the failure to make the election has been discovered by the IRS.

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.

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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. § 301.9100-3 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 acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, § 1.884-2T(d)(4)(i) fixes the time to make the election. 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 to Date B to file an election under § 1.884-2T(d)(4)(i) to increase its earnings and profits by the allocable amount of the earnings and profits of Shareholder as determined under § 1.884-2T(d)(4)(ii). The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election. § 301.9100-1(a).

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 Year X tax return.

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.

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

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