

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B03

PLR-119353-04

Date:

November 23, 2004

In Re:

TY:

Legend

Corp X =

Corp Y =

Corp Z =

Date A =

Date B =

Date C =

Individual M =

Individual N =

Individual O =

Country P =

CPA Firm =

Tax Year 1 =

Tax Year 2 =

Dear _____ :

This is in response to a letter dated April 1, 2004, in which Corp X requests an extension of time under Treas. Reg. §301.9100-3 to file: (1) the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), in accordance with Exhibit A, which is attached to and made part of this ruling letter; (2) the annual certification statement described in Treas. Reg. §1.1503-2(g)(2)(vi)(B) in accordance with Exhibit B, which is attached to and made part of this ruling letter; and (3) the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3)(iii). The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Corp X is a domestic corporation that owns an 85 percent interest in Corp Z, a Country P corporation, that has made a check-the-box election to be treated as a partnership for United States purposes, effective on Date B. Corp Z had dual consolidated losses (DCLs), as defined in Treas. Reg. §1.1503-2(c)(5) for Tax Year 1 and Tax Year 2.

Corp Y, a domestic corporation, owns an interest in an unincorporated joint venture in a foreign country. Corp Y reported losses on its Tax Year 1 and Tax Year 2 federal income tax returns that were incurred as a result of its interest in the unincorporated foreign joint venture in Tax Year 1 and Tax Year 2. In Tax Year 1 and Tax Year 2, Corp X owned 40 percent of Corp Y. On Date A, Corp X acquired the rest of the stock of Corp Y and Corp Y became a member of the Corp X group that files a consolidated federal income tax return.

Individual M was the Tax Director of Corp X for Tax Year 1 and Tax Year 2 and, as such, had the responsibility for ensuring that Corp X and Corp Y complied with federal tax laws. For Tax Year 1 and Tax Year 2, the elections and agreements described in Exhibit A and the annual certification described in Exhibit B were not filed. On Date C, Corp X hired Individual N as tax director to replace Individual M who retired from Corp X shortly thereafter and is now deceased. Shortly after Date C, Corp X hired Individual O to be Tax Counsel/Manager. Individuals N and O subsequently determined, after consultations with CPA Firm, that the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), in accordance with Exhibit A; the annual certification statement described in Treas. Reg. §1.1503-2(g)(2)(vi)(B) in accordance with Exhibit B; and the agreement to avoid having to treat the acquisition of the outstanding stock of Corp Y, on Date A, by Corp X as a triggering event described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3)(iii) had not been filed. All affected tax returns were prepared and filed as if the elections had been made.

In an affidavit, Individual N stated that he felt that due to Individual M's advanced age, failing health, and limited experience with international taxation, Individual M inadvertently failed to prepare and to file the elections and agreements for Tax Year 1 and Tax Year 2 and the annual certification for Tax Year 2. Once Individuals N and O realized the error, this request for relief for an extension of time under Treas. Reg. §301.9100-3 to file the elections and agreements in accordance with Exhibit A; the annual certification in accordance with Exhibit B; and the election described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3)(iii) was initiated.

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 Treas. Reg. §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 Treas. Reg. §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, the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), the annual certification statements described in Treas. Reg. §1.1503-2(g)(2)(vi)(B), and the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3)(iii) are regulatory elections as defined in Treas. Reg. §301.9100-1(b). Therefore, the Commissioner has the discretionary authority under Treas. Reg. §301.9100-1(c) to grant an extension of time, provided that the taxpayer satisfies the rules set forth in Treas. Reg. §301.9100-3(a).

Based upon the facts and circumstances submitted, we conclude that Corp X satisfies Treas. Reg. §301.9100-3(a). Accordingly, Corp X is granted an extension of time of 45 days from the date of this ruling letter to file: the elections and agreements in accordance with Exhibit A; the annual certification in accordance with Exhibit B; and the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(3)(iii) with respect to the Corp Y losses that should have been included in the Corp X Federal income tax return for the tax year that included Date A.

The granting of an extension of time is not a determination that Corp X is otherwise eligible to file the elections, agreements, and certifications. See Treas. Reg. §301.9100-1(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed with respect to your characterization of any of the entities listed in attached Exhibit A and Exhibit B.

No opinion is expressed as to whether an annual certification, as described in Treas. Reg. §1.1503-2(g)(2)(vi)(B), is needed for the losses previously incurred by Corp Y in Tax Year 1 and Tax Year 2.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

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

cc:

EXHIBIT A

Extension of time to file the Election and Agreement described in Treas. Reg. §1.1503-2(g)(2)(i) has been requested as indicated:

Name of Entity	Tax Year for which an Election and Agreement is Requested
Corp Y	Tax Year 1 Tax Year 2
Corp Z	Tax Year 1 Tax Year 2

EXHIBIT B

Extension of time to file the Annual Certification described in Treas. Reg. §1.1503-2(g)(2)(iv)(B) has been requested as indicated:

Name of Entity	Tax Year for which an Annual Certification is requested
Corp Z	Tax Year 2