

In re: PLR-132360-03

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.

Individual A was the Vice President, Tax, of the parent corporation of Taxpayer for the tax years in question. The affidavit of Individual A states that he had ultimate responsibility for the positions taken by Taxpayer on the returns that were filed for the tax year ending on Date A. The affidavit of Individual A states further that he was of the opinion that the loss reported on Taxpayer's return for the tax year ending on Date A would not be a dual consolidated loss under Treas. Reg. § 1.1503-2. Individual A's affidavit states further that he confirmed this opinion with tax professionals employed by CPA Firm. The facts state that Taxpayer is requesting relief after it discovered the missed filings and before their discovery by the IRS.

Taxpayer represents that until Date A, Taxpayer was a dual resident corporation of Country and the United States as defined in Treas. Reg. § 1.1503-2(c)(2). However, during that period of time, Taxpayer was not an investing company as defined by the Country mirror statute and therefore was not subject to the provisions of Treas. Reg. § 1.1503-2(c)(15)(iv). After Date A, Taxpayer was not a dual resident corporation.

Taxpayer represents further that the income tax laws of Country do not deny the use of losses, expenses, or deductions of Taxpayer to offset income of another person because the dual resident corporation is also subject to income taxation by another country on its worldwide income or on a residence 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 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

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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 filings described in Treas. Reg. § 1.1503-2(g)(2) are regulatory elections as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 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 following: (1) the election and agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) with respect to the dual consolidated losses incurred by Taxpayer in the tax year ended on Date A and (2) the annual certification described in Treas. Reg. § 1.1503-2(g)(2)(vi) for the tax years ended on Date B and Date C with respect to the dual consolidated losses incurred by Taxpayer in the tax year ended on Date A.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election agreement and annual certification. § 301.9100-1(a). For example, a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file election agreements pursuant to § 1.1503-2(c)(15)(iv).

No opinion was requested and none is expressed as to the Federal income tax consequences of the transfer of Taxpayer from the Country group and merger into the U.S. group described in footnote 1 of the letter dated April 11, 2003, which the taxpayer characterizes as a triggering event for dual consolidated loss recapture, citing § 1.1503-2(g)(2)(iii).

A copy of this ruling letter should be associated with the election agreements and the annual certification.

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

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furnished to Taxpayer's authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: _____

Reviewer

Enclosure:
Copy for 6110 purposes

cc: