Internal Revenue Service

Number: **200613015**
Release Date: 3/31/2006
Index Number: 9100.22-00, 1503.04-04

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL
PLR-140003-05

Date:
December 16, 2005

LEGEND

Taxpayer =

DE A =
DE B =
DE C =
Tax Year 1 =
Tax Year 2 =
Tax Year 3 =
Individual A =
Individual B =
CPA Firm =

Dear :

This replies to your representative's letter dated July 22, 2005, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 to file the following elections: (i) the election and agreement described in §1.1503-2(g)(2)(i) for Tax Year 1 with respect to the dual consolidated losses ("DCLs") incurred in that year by DE A, DE B, and DE C; (ii) the election and agreement described in §1.1503-2(g)(2)(i) for Tax Year 2 with respect to the DCLs incurred in that year by DE A, DE B, and DE C; and (iii) the annual certification described in §1.1503-2(g)(2)(vi)(B) for Tax Year 2 with respect to the DCLs incurred in Tax Year 1 by DE A, DE B, and DE C. Additional information was submitted by your representative on December 12, 2005. The information submitted is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by 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.

Taxpayer owned 100 percent of DE A, DE B, and DE C. Because DE A, DE B, and DE C are foreign corporations that elected to be treated as disregarded entities for federal income tax purposes, they are each a hybrid entity separate unit under Treas. Reg. §1.1503-2(c)(4). The losses incurred by these hybrid entity separate units in Tax Years 1 and 2 are DCLs under §1.1503-2(c)(5).

Taxpayer prepared and filed its consolidated federal income tax returns for Tax Years 1 and 2 and relied on its tax directors to make all required tax elections. Until mid-Tax Year 2, Individual A was Taxpayer's director of tax, was responsible for its tax return compliance, and acted on its behalf with respect to all tax matters, including the filing of tax elections. Individual A's daily responsibilities increased substantially when Individual A had to assume responsibility for Internal Revenue Service ("IRS") audits. In addition, during Tax Years 1 and 2, there was high turnover in the tax department and the department had to deal with very complicated tax issues. Given this situation, Individual A failed to include with Taxpayer's consolidated federal income tax returns for that year the required elections and agreements under Treas. Reg. §1.1503-2(g)(2)(i) for the Tax Year 1 DCLs incurred by DE A, DE B, and DE C.

In mid-Tax Year 2, Individual B became Taxpayer's new director of tax, and replaced Individual A for all tax-related matters. However, a significant portion of Individual B's time during the period of filing Taxpayer's consolidated federal income tax return for Tax Year 2 was redirected from supervising tax return preparation to an ongoing IRS audit, as well as to other tax matters. Thus, Taxpayer's tax return for Tax Year 2 was completed without Individual B's input. Consequently, Taxpayer's Tax Year 2 consolidated federal income tax return did not include the required elections and agreements for the Tax Year 2 DCLs incurred by DE A, DE B, and DE C and the annual certifications for the Tax Year 1 DCLs.

Taxpayer engaged CPA Firm to review its Tax Year 2 consolidated federal income tax return and state income tax return, which were prepared by Taxpayer's tax department. CPA Firm did not notice that the required elections were not attached to that return before it was filed by Taxpayer. Taxpayer similarly engaged CPA Firm to review its Tax Year 3 consolidated federal income tax return and state income tax return. During that review, CPA Firm discovered that Taxpayer did not file the required elections and agreements for the Tax Years 1 and 2 DCLs incurred by DE A, DE B, and DE C with its

consolidated federal income tax returns for those years and that Taxpayer did not file the annual certifications of the Tax Year 1 DCLs incurred by DE A, DE B, and DE C with its Tax Year 2 consolidated federal income tax return.
The facts also indicate that Taxpayer filed with its Tax Year 3 consolidated federal income tax return the required annual certifications for the DCLs of DE A, DE B, and DE C incurred in Tax Year 1. However, the amounts of the DCLs were incorrectly reported on those annual certifications.

Taxpayer represents that, to the best of its knowledge, it filed this application for relief before the IRS discovered the failure to file the elections and agreements and the annual certifications with respect to the DCLs incurred by DE A, DE B, and DE C in Tax Years 1 and 2.

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. §301.9100-1(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. §301.9100-3(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, the election and agreement and the annual certification described in Treas. Reg. §1.1503-2(g)(2)(i) and (vi)(B), respectively, are regulatory elections 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 rules set forth in §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 60 days from the date of this ruling letter to file the following elections: (i) the election and agreement described in §1.1503-2(g)(2)(i) for Tax Year 1 with respect to the DCLs incurred in that year by DE A, DE B, and DE C; (ii) the election and agreement described in §1.1503-2(g)(2)(i) for Tax Year 2 with respect to the DCLs incurred in that year by DE A, DE B, and DE C; and (iii) the annual certification described in §1.1503-2(g)(2)(vi)(B) for Tax Year 2 with respect to the DCLs incurred in Tax Year 1 by DE A, DE B, and DE C.

As noted, Taxpayer attached to its timely filed Tax Year 3 consolidated federal income tax return the required annual certifications for the DCLs of DE A, DE B, and DE C incurred in Tax Year 1. However, the amounts of the DCLs were incorrectly reported on those annual certifications. Under these circumstances, those annual certifications are not rendered invalid since Taxpayer filed the annual certifications with its timely filed Tax Year 3 consolidated federal income tax return. Treas. Reg. §301.9100-1 does not apply as that section applies to only a late filing of an election. However, Taxpayer should file corrected annual certifications with an amended tax return.

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

A copy of this ruling letter should be associated with the elections and agreements, and the annual 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 your authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Richard L. Chewning
Richard L. Chewning
Senior Counsel
Office of Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: