

Internal Revenue Service

Department of the Treasury

Index Number: 9100.22-00
1503.04-04

Washington, DC 20224

Number: **199941032**
Release Date: 10/15/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-101693-99
Date:

July 19, 1999

In re:

LEGEND

Taxpayer =

FYE 1, 2 and 3 =

FYE 4 =

Country X =

Dear :

This replies to a letter dated January 6, 1999, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreement and certification described in § 1.1503-2A(c)(3) for the fiscal years ending ("FYE") 1, 2, and 3, as the case may be; and to replace the agreements filed under § 1.1503-2A(c)(3) with the agreement described in § 1.1503-2(g)(2)(i), as provided in § 1.1503-2(h)(2)(ii), for FYE 4. Supplementary information was submitted in letters dated March 29, 1999, and May 10, 1999. The information submitted for consideration is substantially as set forth below.

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

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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.

Taxpayer conducted business in Country X through a branch ("X Branch"). Taxpayer's X Branch sustained losses for FYE 1 through 3. These losses were not and have not been used to offset the income of any other persons under the laws of Country X or any other foreign country. The losses of the X Branch had been included in the consolidated income of Taxpayer's parent for each FYE 1 through 3.

In the process of collecting documentation for purposes of obtaining a closing agreement as prescribed in § 1.1503-2(g)(2)(iv)(B)(1), it was noted that no agreement or certification was filed for any fiscal year prior to FYE 4. Taxpayer's request is being made notwithstanding that the dual consolidated loss issue was not raised by the IRS at the time of the examination of the years in question.

In the present situation, § 1.1503-2A(c)(3) fixes the time to file the agreements and certifications for FYE 1, 2 and 3, and § 1.1503-2(h)(2)(ii) fixes the time to replace the agreements filed under § 1.1503-2A(c)(3) with an agreement described in § 1.1503-2(g)(2)(i). Therefore, the Commissioner has discretionary authority pursuant to § 301.9100-3 to grant Taxpayer an extension of time, provided that Taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

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 -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.

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

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taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies the standards of § 301.9100-3. Accordingly, Taxpayer is granted an extension of time under until 30 days from the date of this ruling letter to file the agreements and certifications described in Treas. Reg. § 1.1503-2A(c)(3) for FYE 1, 2, and 3, as the case may be; and to replace the agreements filed under Treas. Reg. § 1.1503-2A(c)(3) for FYE 1, 2, and 3 with the agreement described in Treas. Reg. § 1.1503-2(g)(2)(i), as provided in Treas. Reg. § 1.1503-2(h)(2)(ii), for FYE 4.

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 agreements and certifications.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(j)(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 letter is being sent to Taxpayer and the other authorized representative.

Sincerely,

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