

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-157769-03

Date:
December 19, 2005

LEGEND

- Taxpayer =
- P =
- X Branch =
- Partner 1 =
- Partner 2 =
- Year One =
- Year Two =
- Year =
- Three =
- Date A =

Dear :

This replies to your representative's letter dated September 26, 2003, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 to attach to an amended federal income tax return for Year Two, the documentation required under §1.1503-2(g)(2)(iii)(B) by both Partner 1 and Partner 2 to rebut the presumption that the transfer by P of the assets of its X Branch on Date A constituted a triggering event within the meaning of §1.1503-2(g)(2)(iii)(A)(4). Additional information was submitted in a letter dated November 28, 2005. 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 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 this request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

During Years One and Two, Taxpayer indirectly owned P, a foreign partnership for U.S. tax purposes, which was owned by Partner 1 and Partner 2. During those years, P conducted operations in a foreign country through X Branch. X Branch during those two years incurred net operating losses. On Date A, which fell within Year Two, P transferred the assets of X Branch to a foreign partnership which was indirectly owned by Taxpayer.

Taxpayer's tax manager did not believe that the net operating losses of X Branch were subject to Treas. Reg. §1.1503-2, the dual consolidated loss ("DCL") regulations, when Taxpayer filed its consolidated federal income tax returns for Years One and Two. Accordingly, the tax manager did not file the contemporaneous documentation with Taxpayer's return for Year Two which was required by §1.1503-2(g)(2)(iii)(B) to rebut the presumption that the asset transfer on Date A by P was a triggering event.

In Year Three, Taxpayer became aware of the Internal Revenue Service's interpretation of the DCL regulations pursuant to which the net operating losses of X Branch would be considered DCLs subject to the election agreement and annual certification requirements of Treas. Reg. §1.1503-2(g)(2) (the "(g)(2) elections" and the "annual certifications").

In a separate ruling letter, the Service has granted Taxpayer's request for an extension of time to file the (g)(2) elections and annual certifications with respect to X Branch for Years One and Two. During the process of gathering information with respect to filing the separate ruling letter request, it was discovered that P's transfer of the assets of its X Branch to an entity within the affiliated group on Date A could constitute a triggering event for which the required documentation to rebut the presumption had not been filed.

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 requirement in Treas. Reg. §1.1503-2(g)(2)(iii)(B) that a taxpayer must submit contemporaneous documentation to rebut the presumption that an asset transfer was a triggering event is a regulatory election 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 attach to its U.S. income tax return for Year Two, the documentation required under §1.1503-2(g)(2)(iii)(B) by both Partner 1 and Partner 2 to rebut the presumption that the transfer by P of the assets of X Branch on Date A constituted a triggering event within the meaning of §1.1503-2(g)(2)(iii)(A)(4).

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the rebuttal documents. Treas. Reg. §301.9100-1(a).

A copy of this ruling letter should be associated with the rebuttal documents.

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: