



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
September 4, 2001

OFFICE OF
CHIEF COUNSEL

Number: **200149023**
Release Date: 12/7/2001
TL-N-196-00/CC:INTL:4
UILC: 1503.04-04

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR:

FROM: Michael H. Frankel, Senior Technical Reviewer
CC:INTL:4

SUBJECT:

This Chief Counsel Advice responds to your memorandum dated April 11, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND X =
Y =
Country Z =
Years 1 - 3 =

ISSUE Whether X, a domestic corporation, was a dual resident corporation in Years 1 - 3, when it was not itself subject to Country Z tax, but where, rather, X's losses reduced the amount of taxable income of Y, its Country Z parent that was subject to Country Z tax.

CONCLUSION X was not a dual resident corporation during Years 1 - 3.

FACTS X, a domestic corporation, was a member of a calendar year U.S. consolidated return group during Years 1 - 3. The stock of X and the other members of the consolidated return group was owned, indirectly, by a Country Z corporation, Y. X conducted business solely in the U.S. and had no contacts with nor made any filings in any foreign country. X had no liability to file a return or pay tax in Country Z. Normally, Country Z would not have recognized the existence of X, its assets or operations, for any purpose, as Country Z respected the U.S. corporate existence of X for all purposes. However, pursuant to permission of the Country Z tax authorities, Y included the X losses for Years 1 - 3 when reporting its taxable income for Country Z tax purposes. This permissive inclusion did not affect

the status of X for any Country Z purpose and did not subject X to the taxing jurisdiction of Country Z. The Country Z tax liability, if any, resulting from the election was the sole responsibility of Y.

LAW AND ANALYSIS Section 1503(d)(2)(A) provides that:

. . . [A] ‘dual consolidated loss’ means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

Section 1.1503-2A(b)(2) of the temporary regulations, in effect for taxable years beginning after 1986 and before October 1, 1992 (“Temporary Regulations”) provided:

The term “dual consolidated loss: means the net operating loss . . . of a domestic corporation incurred in a year in which the corporation is a dual resident corporation.

Section 1.1503-2A(b)(3) of the Temporary Regulations provided:

a domestic corporation shall be a dual resident corporation if the worldwide income of such corporation is subject to the income tax of a foreign country, or such corporation is subject to the income tax of a foreign country on a residence basis (and not on a source basis).

Section 1.1503-2(c)(5) of the regulations, in effect for taxable years beginning on or after October 1, 1992 (“Final Regulations”) provides:

The term “dual consolidated loss” means the net operating loss . . . of a domestic corporation incurred in a year in which the corporation is a dual resident corporation.

Section 1.1503-2(c)(2) of the Final Regulations provides:

A dual resident corporation is a domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country. . . .

The Temporary Regulations and the Final Regulations exclude from the definition of “dual resident corporation” a U.S. corporation that is not itself subject to Country Z tax, where the losses of the U.S. corporation, instead, reduce the amount of its Country Z parent’s income that is subject to Country Z tax. In the instant case, X was not subject to Country Z tax in Years 1 - 3, as X had no liability to file a return in Country Z, nor was X taxed by Country Z on a worldwide or residence basis

during those years. X had no physical presence in Country Z, and no Country Z source income. Rather, Y was taxed on its ratable share of all of X's income.

[REDACTED]

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Please call Ken Allison at 202-622-3860 if you have any further questions.