

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-136379-01

Date:

December 12, 2001

**LEGEND**

Taxpayer =  
Company A =  
Entity =  
Date A =  
Date B =  
Individual A =

Dear :

This replies to your letter dated June 12, 2001, submitted on behalf of Taxpayer, requesting that Taxpayer be granted an extension of time under Treas. Reg. § 301.9100-3 to file the agreement provided under § 1.1503-2(g)(2)(i) with respect to the loss incurred by Entity while it was a member of Taxpayer’s consolidated group for the year ended on Date A, and to file the annual certification required under § 1.1503-2(g)(2)(vi)(B) with respect to losses of Entity for prior years. 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 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.

Individual A is the Vice President-Tax of Taxpayer. The affidavit from Individual A and the facts submitted indicate that Taxpayer concluded that Company A, and its related consolidated subsidiaries including Entity were not members of Taxpayer’s consolidated tax group on Date B. Thus, Taxpayer did not file the agreement and annual certification with respect to the losses of Entity. Subsequently, it was concluded that Company A should be considered a member of Taxpayer’s consolidated tax group on Date B and, therefore, should file an agreement with respect to the loss incurred by Entity while it was a member of Taxpayer’s consolidated group for the year ended on Date A, and an annual certification with respect to the losses of Entity for prior years.

In re: PLR-136379-01

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. § 301.9100-1(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. § 301.9100-3(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, § 1.1503-2(g)(2) fixes the time to file the agreement and annual certification. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 60 days from the date of this ruling letter to file the agreement provided under § 1.1503-2(g)(2)(i) with respect to the loss incurred by Entity while it was a member of Taxpayer's consolidated group for the year ended on Date A, and to file the annual certification required under § 1.1503-2(g)(2)(vi)(B) with respect to losses of Entity for prior years.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the agreement and annual certification. § 301.9100-1(a).

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.

A copy of this ruling letter should be associated with the agreement and annual certification

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.

Sincerely,  
Allen Goldstein, Reviewer  
Office of the Associate Chief Counsel (International)