Rev. Proc. 2000–42

SECTION 1. PURPOSE

This revenue procedure informs taxpayers of the information they must submit to request a closing agreement under §1.1503–2(g)(2)(iv)(B)(2)(i) to prevent the recapture of dual consolidated losses (DCLs) upon the occurrence of certain triggering events.

Before this revenue procedure, the Internal Revenue Service and the Department of the Treasury had not specified in detail how taxpayers should request these

closing agreements. The Service and Treasury are issuing this revenue procedure to provide taxpayers with guidance on the information and representations they should include in a §1503(d) closing agreement request and to facilitate the process and reduce the time necessary for the Service to process requests.

Appendix A to this revenue procedure is a model closing agreement. The Service intends the model closing agreement to serve as an example of the format and contents of a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement and to aid taxpayers in understanding how the information required by this revenue procedure will be used in the closing agreement. Taxpayers should note, however, that the model agreement is only an example. A taxpayer's actual agreement could differ from the model. Finally, Appendix B is a flow chart of the entities included in the model closing agreement, along with notes explaining the model agreement.

SECTION 2. BACKGROUND

The United States taxes the worldwide income of domestic corporations. The United States allows certain domestic corporations to file consolidated returns with other affiliated domestic corporations. When two or more domestic corporations file a consolidated return, losses that one corporation incurs generally may reduce or eliminate tax on income that another corporation earns.

Because other countries may apply different standards for determining the residence and taxability of a corporation (e.g., based on the management and control of the corporation), some domestic corporations are dual resident corporations and, as such, are also subject to the income tax of a foreign country on their income on a residence basis (and not on a source basis). Foreign countries often have provisions that permit commonly owned entities to combine their income and losses through consolidation or some other form of combined reporting for income tax purposes.

Prior to the Tax Reform Act of 1986, if a dual resident corporation were a resident of a foreign country with tax laws that permitted the losses of the corporation to be used to offset the income of another person (e.g., under a consolidated return provision), then the dual resident corporation could use any losses it generated twice: once to offset the income of affiliates resident in the United States (but not abroad), and again to offset the income of its affiliates resident only in the other country. Thus, such a dual resident corporation could use a single economic loss to offset two separate items of income in two jurisdictions. Congress expressed concerns that this dual use of a loss could result in an undue tax advantage to certain foreign investors that made investments in domestic corporations, and could create an undue incentive for certain foreign corporations to acquire domestic corporations and for domestic corporations to acquire foreign rather than domestic assets. Staff of Joint Committee on Taxation, 99th Cong., 2nd Sess., General Explanation of the Tax Reform Act of 1986, at 1064 – 1065 (1987). As part of the Tax Reform Act of 1986, Congress responded by enacting §1503(d) to prevent the use of DCLs that resulted from consolidation in multiple jurisdictions.

The Treasury and Service issued temporary regulations under §1503(d) in 1989 (T.D. 8261, 1989–2 C.B. 220), and final regulations in 1992 (T.D. 8434, 1992–2 C.B. 240). The final regulations in §1.1503–2 are generally effective for taxable years beginning on or after October 1, 1992; the temporary regulations in §1.1503–2A are effective for taxable years beginning after December 31, 1986, and before October 1, 1992. The temporary regulations were initially designated as §1.1503–2T, but were redesignated as §1.1503–2A by the final regulations.

Section 1503(d) provides that a DCL of a dual resident corporation shall not be allowed to reduce the taxable income of any other member of the corporation's affiliated group for any taxable year. The term dual resident corporation includes a domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis and a separate unit of a domestic corporation (e.g., a foreign branch, an interest in a partnership, an interest in a trust, or a disregarded entity that a foreign country taxes at the entity level). *See* Treas. Reg. §1.1503–2(c)(2) – (4). This revenue procedure will collectively refer to dual resident corporations and separate units as "DRCs."

The final §1503(d) regulations permit a taxpayer to elect to use a DCL of a DRC by entering into an agreement under §1.1503–2(g)(2)(i) in which the taxpayer certifies that the DCL has not been, and will not be, used to offset the income of another person under the laws of a foreign country. Certain subsequent events, known as "triggering events" require the taxpayer to recapture the losses as income, including an interest charge. Treas. Reg. §§1.1503–2(g)(2)(iii) and (vii). If a taxpayer fails to comply with the §1503(d) recapture provisions upon the occurrence of a triggering event, then the DRC (or a successor-in-interest) that incurred the DCL generally will not be eligible for relief to use any DCLs incurred in the five (5) taxable years beginning with the year in which recapture is required. Treas. Reg. §1.1503–2(g)(2)(vii)(F)(1).

Triggering events occur when: (1) any portion of the loss taken into account in computing the DCL is used by any means to offset the income of any other person for foreign tax purposes within fifteen (15) years; (2) a DRC or domestic owner of a separate unit ceases to be a member of the consolidated group that filed the agreement at a time when there is a continuing ability to use the DCL to offset income of another person for foreign tax purposes; (3) an unaffiliated DRC or unaffiliated domestic owner of a separate unit becomes a member of a consolidated group, unless there is no continuing ability to use the DCL to offset income of another person for foreign tax purposes; (4) a DRC transfers its assets to a transferee in a transaction that results, under the laws of a foreign country, in a carryover of the losses, expenses, or deductions that make up the DCL; (5) a domestic owner of a separate unit disposes of fifty (50) percent or more of the assets of, or its interest in, the separate unit at a time when there is a continuing ability to use the DCL to offset income of another person for foreign tax purposes; (6) an unaffiliated DRC or unaffiliated domestic owner of a separate unit becomes a foreign corporation in a transaction that, for foreign tax purposes, is not treated as involving a transfer of assets to a new entity, unless there is no continuing ability to use the DCL to offset income of another person for foreign tax purposes; or (7) the taxpayer fails to file an annual certification required under §1.1503–2(g)(2)(vi)(B). Treas. Reg. §1.1503–2(g)(2)(iii)(A).

The final regulations provide two exceptions to events described as triggering events, making the events not triggering events requiring recapture of losses and an interest charge. The first exception, under §1.1503–2(g)(2)(iv)(A), applies when a DRC, or its assets, is acquired by another member of the DRC's consolidated group. The second exception, under §1.1503–2(g)(2)(iv)(B), applies, provided the taxpayer enters into a closing agreement, when a DRC or a domestic owner of a separate unit becomes disaffiliated from its consolidated group, or when an unaffiliated domestic corporation or new consolidated group acquires the DRC or its assets.

The Service is aware that as a result of taxpayers' ability to elect entity classification under the §7701 elective Federal tax classification regulations that became effective as of January 1, 1997 (i.e., the check-the-box regulations), the number of DRCs may increase, and taxpayers may become subject to the §1503(d) DCL provisions, including the recapture provisions. For instance, the conversion of a foreign branch to a foreign corporation may be treated as a triggering event under the final §1503(d) regulations. *See* Treas. Reg. §§1.1503–2(g)(2)(iii)(A)(4) – (7) and Treas. Reg. §301.7701–3(g)(1). Therefore, this procedure is also intended to publicize the Service's procedures and requirements that will prevent certain reorganization and disposition transactions involving DRCs from resulting in §1503(d) recapture consequences.

SECTION 3. SCOPE

.01 General.

This section provides the conditions that must be satisfied for the Service to consider requests from taxpayers for a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement.

.02 Taxpayers Must Be In Compliance And Must First Request Any Treas. Reg. §301.9100 Relief Needed.

Before requesting a closing agreement under §1.1503–2(g)(2)(iv)(B)(2)(i), the taxpayer should ensure that it has complied with the regulations issued under §1503(d), including having filed the requisite agreements, elections, and certifications under §1.1503–2(g)(2) (or §1.1503–2A(c)(3) or (d)(3) if the taxpayer is asking for relief under §1.1503–2A). *See infra*, section 3.07 (which provides when the Service will consider including in a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement, DCLs covered by the temporary §1503(d) regulations). In practical terms, this means that the taxpayer should first request and secure (or at least simultaneously request) any necessary relief under §301.9100 for an extension of time to make any required election or application under the §1503(d) regulations. For example, a taxpayer that has not filed the requisite agreements and elections under §1.1503–2(g)(2)(i) must first request (or simultaneously request) §301.9100 relief to file the elections and agreements.

Under §§1.1503–2(g)(2)(iii)(A) and (iv)(B), a taxpayer must enter into a closing agreement with the Service before the taxpayer files its tax return for the taxable year of a triggering event to prevent the recapture of losses and the accompanying interest charge. Under this revenue procedure, however, a taxpayer can prevent the recapture of losses and the interest charge if the taxpayer submits its request for a closing agreement by the due date of its tax return (including extensions) for the triggering event year and specifies on its tax return that it is requesting a §1503(d) closing agreement.

.03 Statutes Of Limitations.

The Service may request a taxpayer to execute a consent to extend the period of limitations for assessment of tax for the taxable periods related to the DCLs for which the taxpayer has requested a closing agreement.

.04 When And By Whom A Closing Agreements May Be Executed.

Treas. Reg. §1.1503–2(g)(2)(iv)(B)(1) provides that if the requirements of §1.1503–2(g)(2)(iv)(B)(2) are met, the following events will not constitute triggering events requiring the recapture of DCLs: (1) an affiliated DRC or an affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group; (2) an unaffiliated DRC or an unaffiliated domestic owner becomes a member of a consolidated group; (3) assets of a DRC are acquired by an unaffiliated domestic corporation or a member of a new consolidated group; or (4) a domestic owner of a separate unit transfers its interest in the separate unit to an unaffiliated domestic corporation or to a member of a new consolidated group. Treas. Reg. §1.1503–2(g)(2)(iv)(B)(2) requires (among other requirements) that the taxpayers enter into a closing agreement with the Service which provides that the taxpayers will be jointly and severally liable for the total amount of the recapture of the DCLs and an interest charge upon any subsequent triggering event.

The Service may execute a closing agreement under §1.1503–2(g)(2)(iv)(B)(2)(i) and §7121 with the following taxpayers: (1) the consolidated group (i.e., the parent on behalf of the consolidated group), the unaffiliated DRC, or the unaffiliated domestic owner that filed the §1.1503–2(g)(2)(i) agreement for the relevant DCLs, and (2) the unaffiliated domestic corporation or the new consolidated group, provided the requirements of §1.1503–2(g)(2)(iv)(B) are satisfied. This revenue procedure will refer to these taxpayers as the "Taxpayer Parties." Authorized officers of the Taxpayer Parties must sign the closing agreement (generally two originals per party to the agreement).

.05 Taxpayers That Cannot Execute A Closing Agreement.

The Service will not execute a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement with foreign entities/transferees, individuals, or partnerships. Section 1.1503–2 does not provide for closing agreements with such taxpayers.

.06 Losses Must Be DCLs.

The Service will not execute a closing agreement with taxpayers for net operating losses (NOLs) that are not DCLs. Therefore, taxpayers must represent that the losses at issue are DCLs.

.07 Closing Agreements For Losses Under The Temporary Regulations.

The final regulations provide for taxpayers to enter into a §1.1503–2(g)(2)-

(iv)(B)(2)(i) closing agreement with the Service to prevent certain events from resulting in recapture and an interest charge; the temporary regulations do not contain such a provision. In appropriate circumstances, taxpayers may elect to apply the final regulations to DCLs which are otherwise subject to §1.1503–2A. Treas. Reg. §1.1503–2(h). If a taxpayer files a request to enter into a closing agreement for losses covered by the final regulations, under this revenue procedure, the Service will consider a request to include in the closing agreement DCLs otherwise covered by §1.1503–2A for which the taxpayer has not made a §1.1503–2(h) election to apply the final regulations. This revenue procedure's reference to "representations and citations as appropriate under §1.1503–2A," means representations and citations related to a DCL covered by §1.1503–2A.

SECTION 4. PROCEDURE TO ENTER INTO A CLOSING AGREEMENT

.01 General.

The first revenue procedure published each year (the Annual Revenue Procedure) outlines the general procedures of the Service for the issuance of letter rulings and determination letters, including closing agreements entered into under the authority of §7121, by the National Office. *See, e.g.*, Rev. Proc. 2000–1, 2000–1 I.R.B. 4. Taxpayers should note that the Service also publishes an annual revenue procedure, generally in the first Internal Revenue Bulletin of the year, which provides a list of those areas of the Code under the jurisdiction of the Associate Chief Counsel (International), for which the Service will not issue advance letter rulings, (e.g., certain §1503(d) determinations, such as whether the conditions for excepting losses of a DRC from the definition of a DCL are satisfied). *See, e.g.*, Rev. Proc. 2000–7, 2000–1 I.R.B. 227.

The consolidated group (i.e., the parent on behalf of the consolidated group), the unaffiliated DRC, or the unaffiliated domestic owner that filed the agreements under §1.1503–2(g)(2)(i) for the DCLs for which the closing agreement would relate may file a request to enter into a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement by following the procedures of the most recent Annual Revenue Procedure and this revenue procedure. Taxpayers must include the user fee required by the most recent Annual Revenue Procedure.

.02 Additional Information.

Because the information, representations, and documentation necessary to enter into a closing agreement depend on all the facts and circumstances, the Service may require information, representations, and documentation in addition to that set forth in this revenue procedure and the most recent Annual Revenue Procedure. Taxpayers should submit such additional information in accordance with the Annual Revenue Procedure and within the time allowed by the Annual Revenue Procedure. If a taxpayer does not submit the information requested within the time provided, the request will be closed and the taxpayer will be notified in writing. *See, e.g.*, section 10.06(3), Rev. Proc. 2000–1. If while processing a taxpayer's request for a §1503(d) closing agreement, the Service determines that the taxpayer is not in compliance with the §1503(d) regulations and needs relief under §301.9100 to obtain an extension of time to make a required election or application under the §1503(d) regulations, then the taxpayer has thirty (30) days from the date the Service notifies the taxpayer to file a request for relief under §301.9100. If a taxpayer does not submit the §301.9100 request within the thirty-day period, the §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement request will be closed and the taxpayer will be notified in writing.

Taxpayers are responsible for keeping the Service informed of all material changes to the information, representations, and documentation submitted as part of the closing agreement request.

SECTION 5. INFORMATION TAXPAYERS MUST INCLUDE IN REQUEST

.01 General.

This section describes the information, representations, and documentation that taxpayers are expected to provide with a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement request. Taxpayers should organize information and representations following the format of this procedure and should use appropriate descriptive headings. To facilitate the processing of the closing agreement request, taxpayers must also provide a full statement of all relevant facts related to the taxpayers and the DCLs.

Taxpayers must address each item in this section, providing all relevant facts. If an item is not applicable, taxpayers should so state and briefly explain why.

.02 Information Related To Taxpayer Parties, Relevant Members Of The Consolidated Group, And DRCs.

Taxpayers must provide a full statement of the facts, including the following general information, as appropriate, about each Taxpayer Party, relevant member of the consolidated group, and DRC with losses that will be covered by the closing agreement.

1. Name, address, and employer identification number.
2. Type of entity, and date and place of incorporation or other formation.
3. Information about the formation and treatment of disregarded entities directly or indirectly owned by a Taxpayer Party (including the date the entity became or elected to become a disregarded entity under §301.7701–3).
4. Classifications of the entity under §1.1503–2(c)(2) – (4) (e.g., dual resident corporation, foreign branch separate unit, hybrid entity separate unit) before and after any triggering event. If the taxpayer is requesting that the closing agreement include losses covered by the temporary regulations, the taxpayer should classify the entity under §1.1503–2A(b) (e.g., dual resident corporation, foreign branch separate unit, partnership interest separate unit).
5. Detailed explanation of the chain of ownership between the parent of the consolidated group (or in the case where there is no U.S. consolidated group, the unaffiliated domestic owner of the DRC) and the DRC before and after any triggering event (as described in §1.1503–2(g)(2)(iii) or §1.1503–2A(c)(3)(iii), as appropriate).

6. The taxable year of a Taxpayer Party to the closing agreement (both before and after any triggering event). If as a result of a triggering event there is a requirement for filing a short-period return under §1.1502–76(b) or other relevant provision, taxpayer should provide related information and an explanation.
7. The office that has jurisdiction over the Federal income tax returns of a Taxpayer Party to the closing agreement.

.03 Additional Information Related To DRCs.

Taxpayers must provide the following additional information for each DRC with losses that will be covered by the closing agreement:

1. The country or countries that tax the DRC on its worldwide income or on a residence basis. If the DRC is a separate unit, identify the separate unit and name under which it conducts business, and the country in which its principal place of business is located.
2. Description of the principal business activity.
3. Amounts and taxable years of DRC's NOLs.
4. Date the period of limitations on assessment of tax expires related to each DCL.

.04 List And Description Of All Triggering Events.

For all losses to be included in the §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement, taxpayers must provide a list and description of all triggering events described in §1.1503–2(g)(2)(iii) and §1.1503–2A(c)(3)(iii) as appropriate (including specific citations). In particular, taxpayers should explain how the triggering events are treated under the Code, including information about any taxable transfers or any nonrecognition provisions that apply, and should provide information about all parties, stock, and assets involved. Taxpayers should indicate whether any triggering event listed includes a transaction within the meaning of §1.1502–75(d)(2) or (3) whereby the common parent of the consolidated group that filed the §1.1503–2(g)(2)(i) agreements is no longer in existence or whereby the common parent was a party to a reverse acquisition, through which the consolidated group continues.

Taxpayers should state whether an exception to a triggering event applies and should explain the exception in detail and include a citation to the relevant provision (e.g., §1.1503–2(g)(2)(iv)(A), §1.1503–2(g)(2)(iv)(B), or §1.1503–2A(c)(3)(vi)). If a taxpayer has exercised rebuttal rights provided in §§1.1503–2(g)(2)(iii)(A)(2) – (7), taxpayer must provide information related to those rebuttals.

.05 Specific Representations And Agreements Required For Closing Agreement.

Taxpayers must provide the following representations and agreements, when applicable, to secure a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement:

1. That a corporation is a DRC as described in §1.1503–2(c)(2). Taxpayers must provide a representation for each relevant entity, and provide a §1.1503–2A representation as appropriate.
2. That a foreign branch, interest in a partnership, or interest in a trust is a separate unit as described in the appropriate subsection of §1.1503–2(c)(3) and a DRC as described in §1.1503–2(c)(2). Taxpayers must provide a representation for each relevant entity, and provide a §1.1503–2A representation as appropriate.
3. That a hybrid entity separate unit is a hybrid entity separate unit as described in §1.1503–2(c)(4) and a DRC as described in §1.1503–2(c)(2). Taxpayers must provide a representation for each relevant entity, and provide a §1.1503–2A representation as appropriate.
4. That the NOLs described are DCLs under §1.1503–2(c)(5) (or under §1.1503–2A(b)(2) as appropriate).
5. That the requisite elections, agreements, and certifications were timely made under §1.1503–2(g)(2)(i) (or §1.1503–2A(c)(3) or (d)(3) as appropriate).
6. That the DCLs were computed as required under §1.1503–2(d)(1) (or §1.1503–2A(f)(1) as appropriate).
7. That the necessary reporting and certifications were made under §1.1503–2(g)(2)(vi) (or §1.1503–2A(c)(3)(v) as appropriate).
8. That the consolidated group, unaffiliated DRC, or unaffiliated domestic owner will or has filed an election and agreement described in §1.1503–2(g)(2)(i) with its timely filed Federal income tax return for the year(s) of the triggering event(s) described in §1.1503–2(g)(2)(iii). Taxpayers should provide a §1.1503–2A representation as appropriate.
9. That apart from the triggering events listed, no triggering event described in §1.1503–2(g)(2)(iii) (or §1.1503–2A(c)(3)(iii) as appropriate) has occurred applicable to the DCLs.
10. That upon any subsequent triggering event described in §1.1503–2(g)(2)(iii), the Taxpayer Parties will be jointly and severally liable for the total amount of the recapture of the DCLs to which the closing agreement relates and the related interest charge under §1.1503–2 (g)(2)(vii), to the extent the triggering event does not fall under one of the exceptions provided in §1.1503–2(g)(2)(iv)(A) or (B).
11. That the new consolidated group or unaffiliated domestic corporation will treat any potential recapture of the DCLs under §1.1503–2(g)(2)(vii) as unrealized built–in gain for purposes of §384(a), subject to any applicable exceptions thereunder, and will treat the total recapture amount of the described DCLs as recognized built-in gain for purposes of §384(a), subject to any applicable exceptions thereunder.
12. That the new consolidated group or unaffiliated domestic corporation will comply with the reporting requirements described in §1.1503–2(g)(2)(vi) for each DCL for the taxable years covered by the closing agreement.
13. That an election was made (or was not made) under §1.1503–2(h)(2) or (3) for any DCLs incurred in taxable years beginning before October 1, 1992. Taxpayers should provide an explanation for the election provision used.
14. That an event described in

§§1.1503–2(g)(2)(iii)(A)(2) – (7) is not a triggering event under such provision because the transfer did not result in a carryover under foreign law of such losses, or because such losses cannot be used to offset the income of another person under foreign law. Taxpayers should represent the specific requirements under the provision cited. *See, e.g.*, section 3.01(4) and section 4.01(22), Rev. Proc. 2000–7 (the National Office of the Service generally will not make a determination related to the rebuttals).

.06 Documents Required.

As part of the initial submission requesting a §1.1503–2(g)(2)(iv)(B)(2)(i) closing agreement, taxpayers must provide the following documents when applicable:

1. Copies of all elections, agreements and certifications required by §1.1503–2(g)(2) (or §1.1503–2A (c)(3) or (d)(3)).
2. Copies of all ruling letters issued by the Service under §301.9100 providing for an extension of time to make a required election or application under the §1503(d) regulations.
3. Copy of all consents to an extension of the statute of limitations on assessment and collection.
4. Documents supporting the rebuttal of a presumption of a triggering event described in §§1.1503–2(g)(2)(iii)(A)(2) – (7).
5. Other documents as requested by the Service.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1706.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information is contained in sections 4 and 5 of this revenue procedure. This information will enable the Service to determine whether to execute a closing agreement under §§1503(d) and 7121 of the Code. The likely respondents are domestic corporations.

The estimated average annual reporting and/or recordkeeping burden is two-thousand (2,000) hours.

The estimated average annual burden per applicant is one-hundred (100) hours. The estimated number of applicants is twenty (20). The estimated frequency of responses is on occasion.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Camille B. Evans of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure contact Camille B. Evans or Kenneth D. Allison of the Office of the Associate Chief Counsel (International) at (202) 622-3860 (not a toll free call).

Appendix A

DEPARTMENT OF THE TREASURY
INTERNAL REVNUE SERVICE

MODEL CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the Code), Corporation A, 123 Main Street, Wilmington, DE 20000, EIN 11-1234567, a domestic corporation, as common parent on behalf of all the members of a consolidated group (the Corporation A Group); Corporation B, 124 Main Street, Wilmington, DE 20000, EIN 22-1234567, a domestic corporation, as common parent on behalf of all the members of a consolidated group as of January 1, Year 3 (the Corporation B Group); and the Commissioner of Internal Revenue hereby make the following closing agreement (Closing Agreement) based on the representations made by Corporation A and Corporation B, in paragraphs one (1) through fourteen (14) below:

WHEREAS:

(1) Corporation A, a Delaware corporation and party to this Closing Agreement, owned through December 31, Year 2, all of the stock of Corporation B, a Delaware corporation and party to this Closing Agreement. Until December 31, Year 2, Corporation A had outstanding Class X common stock and Class Y common stock. Corporation A is the common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis (the Corporation A Group). Corporation B was a member of the Corporation A Group through December 31, Year 2. On January 1, Year 3, Corporation B became the common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis (the Corporation B Group).

(2) Corporation B owns all of the stock of Corporation D, a Delaware corporation (EIN 33-1234567) and a member of the Corporation A Group through December 31, Year 2, and of Corporation E, a Delaware corporation (EIN 44-1234567) and a member of the Corporation A Group through December 31, Year 2. Corporation D and Corporation E became members of the Corporation B Group on January 1, Year 3.

(3) Since 1970, Corporation D has maintained assets and operated a widgets business in Country 1 through a branch in Country 1 (Branch 1). Branch 1 is a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a dual resident corporation (DRC) as defined in Treas. Reg. §1.1503–2(c)(2).

(4) Since 1970, Corporation E has maintained assets and operated a widgets business in Country 2 through a branch in Country 2 (Branch 2). Branch 2 is a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a DRC as defined in Treas. Reg. §1.1503–2(c)(2).

(5) Since 1975, Corporation E has maintained assets and operated a widgets business in Country 3 through a branch in

Country 3 (Branch 3). Branch 3 is a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a DRC as defined in Treas. Reg. §1.1503–2(c)(2).

(6) Since 1972, Corporation E has maintained assets and operated a widgets business in Country 4 through a branch in Country 4 (Branch 4). Branch 4 is a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a DRC as defined in Treas. Reg. §1.1503–2(c)(2).

Branch 1, Branch 2, Branch 3, and Branch 4 will hereinafter collectively be referred to as the "Corporation B Branches."

(7) The income and losses of Branch 4 were included in the Corporation A Group through Date A, Year 2. The income and losses of Branch 1, Branch 2, and Branch 3 were included in the Corporation A Group through December 31, Year 2.

(8) On Date A, Year 2, Corporation E, sold all of the assets of Branch 4 to an unrelated Country 4 company, Corporation 4. Corporation E's sale of Branch 4's assets is not a triggering event under Treas. Reg. §1.1503–2(g)(2)(iii)(A)(5) because the sale did not result in a carryover under Country 4 law of Branch 4's losses, expenses, or deductions to Corporation 4. As a result of this Date A, Year 2 sale, Branch 4 ceased to be a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a DRC as defined in Treas. Reg. §1.1503–2(c)(2). *See Appendix B, Note 1.*

(9) On December 31, Year 2, Corporation A distributed all of the stock of Corporation B to its Corporation A Class X common stockholders in exchange for all of the Corporation A Class X common stock in a split-off transaction described in Code §355. As a result of this split-off transaction: (a) Corporation B, Corporation D, and Corporation E, and the income and losses of Branch 1, Branch 2, and Branch 3 ceased to be included in the Corporation A Group; (b) Corporation B became the common parent of the Corporation B Group; and (c) the income and losses of Branch 1, Branch 2, and Branch 3 became included with the Corporation B Group. *See Appendix B, Note 2.*

(10) On Date C, Year 3, Corporation E sold the Branch 3 assets to an unrelated Country 3 company, Corporation 3. Corporation E's sale of Branch 3's assets is not a triggering event under Treas. Reg. §1.1503–2(g)(2)(iii)(A)(5) because the sale did not result in a carryover under the laws of Country 3 of Branch 3's losses, expenses, or deductions to Corporation 3. As a result of this Date C, Year 3 sale, Branch 3 ceased to be a separate unit as described in Treas. Reg. §1.1503–2(c)(3)(i)(A) and a DRC as defined in Treas. Reg. §1.1503–2(c)(2). *See Appendix B, Note 3.*

(11) The Corporation B Branches incurred net operating losses (NOLs) for the Year 1 taxable year and the Year 2 taxable year. Such losses were computed in accordance with Treas. Reg. §1.1503–2 (d)(1) and are as follows:

BRANCH	*Year 1 Tax Year*	*Year 2 Tax Year*
Branch 1	$	$
Branch 2	$	$
Branch 3	$	$
Branch 4	$_____	$__N.A. *___
TOTAL	$_____	$_____

**See Appendix B, Note 4.*

The Corporation B Branches' NOLs for the Year 1 taxable year and the Year 2 taxable year will hereinafter collectively be referred to as the Corporation B Branches NOLs.

(12) The Corporation A Group used all of the Corporation B Branches NOLs within the meaning of Treas. Reg. §1.1503–2(c)(15).

(13) Corporation A, as common parent of the Corporation A Group, filed the elections and agreements described in Treas. Reg. §1.1503–2(g)(2)(i) for the Corporation B Branches NOLs incurred for the Year 1 taxable year and the Year 2 taxable year.

(14) Excluding the distribution of Corporation B stock to the Corporation A Class X common stockholders in a Code §355 split-off transaction, on December 31, Year 2, (as described in paragraph 9 above), causing Corporation B and its affiliates to cease being members of the Corporation A Group, no triggering event described in Treas. Reg. §1.1503–2 (g)(2)(iii) has occurred that is applicable to the Corporation B Branches NOLs.

THEREFORE, based on the above information and material submitted by Corporation A and Corporation B in connection with this Closing Agreement, and in the absence of other material factual or legal circumstances concerning the events described above, it is determined for federal income tax purposes that with respect to the Corporation B Branches NOLs:

(1) This Closing Agreement is a closing agreement described in Treas. Reg. §1.1503–2(g)(2)(iv)(B)(2)(i).

(2) The Corporation B Branches are separate units as described in Treas. Reg.

§1.1503–2(c)(3)(i)(A) and are dual resident corporations as defined in Treas. Reg. §1.1503–2(c)(2).

(3) The Corporation B Branch NOLs are dual consolidated losses under Treas. Reg. §1.1503–2(c)(5).

(4) But for Treas. Reg. §1.1503–2 (g)(2)(iv)(B)(2), the distribution of Corporation B stock to the Corporation A Class X common stockholders in a Code §355 split-off transaction, causing Corporation B, Corporation D, and Corporation E to cease being members of the Corporation A Group and the income and losses of the Corporation B Branches to cease being included in the Corporation A Group, was a triggering event under Treas. Reg. §1.1503–2(g)(2)(iii)(A)(2) requiring the recapture of Corporation B Branch NOLs as required by Treas. Reg. §1.1503–2(g)(2)(vii).

(5) Under Treas. Reg. §1.1503–2 (g)(2)(iv)(B)(2), the distribution of Corporation B stock to Corporation A Class X common stockholders in a Code §355 split-off transaction, whereby Corporation B, Corporation D, and Corporation E ceased to be members of the Corporation A Group and the income and losses of the Corporation B Branches ceased to be included in the Corporation A Group, is not considered to be a triggering event requiring the recapture of the Corporation B Branch NOLs and an interest charge.

(6) Upon any subsequent triggering event described in Treas. Reg. §1.1503–2(g)(2)(iii), the Corporation A Group and the Corporation B Group will be jointly and severally liable for the total amount of recapture of the dual consolidated losses of the Corporation B Branches and the related interest charge under Treas. Reg. §1.1503–2(g)(2)(vii), to the extent the triggering event does not fall under one of the exceptions provided in Treas. Reg. §1.1503–2(g)(2)(iv)(A) or (B). The character and source of the recapture amount shall be determined pursuant to Treas. Reg. §1.1503-2(g)(2)(vii)(D). An event otherwise constituting a triggering event applicable to the Corporation B Branch NOLs under Treas. Reg. §1.1503–2(g)(2)(iii)(A) shall not constitute a triggering event if it occurs in any taxable year after the fifteenth (15^{th}) taxable year following the year in which the Corporation B Branch NOLs were incurred.

(7) The Corporation B Group will treat any potential recapture amount under Treas. Reg. §1.1503–2(g)(2)(vii) as unrealized built-in gain for purposes of Code §384(a), subject to any applicable exceptions thereunder, and such total recapture amount shall constitute recognized built-in gain of the Corporation B Group for purposes of Code §384(a), subject to any applicable exceptions thereunder.

(8) The Corporation B Group will comply with the reporting requirements described in Treas. Reg. §1.1503–2 (g)(2)(vi) with respect to each Corporation B Branch NOL for the Year 1 taxable year and the Year 2 taxable year.

(9) If the amount of the Corporation B Branch NOLs is adjusted by the Internal Revenue Service, judicial authority, or otherwise in a final determination of taxes for taxable years ending December 31, Year 1, and December 31, Year 2, the provisions of this Closing Agreement will apply *mutatis mutandis* to such final adjusted loss amounts.

NOW THIS CLOSING AGREEMENT WITNESSETH, that Corporation A, Corporation B, and the Commissioner of Internal Revenue hereby mutually agree to the determinations set forth above and further mutually agree that those determinations shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions shall render this Closing Agreement ineffective to the extent that it is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF, by signing the foregoing, the above parties signify that they have read and agreed to the terms of this document.

CORPORATION A

By:_____ Date:_____

Title: _____

CORPORATION B

By:_____ Date:_____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

By:_____ Date:_____

Title: Associate Chief Counsel (International)

By:_____ Date:_____

Title: Director, International