



BDO Seidman, LLP
Accountants and Consultants

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Notice 2006-13

IRS releases Notice 2006-13 (the “Notice”) announcing future rules adopting a reasonable cause standard for dual consolidated filings

Tax Alert

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FOR MORE INFORMATION

please contact:

Jack Frame

330 Madison Ave
New York, NY 10017

Phone: 212-885-8125

Fax: 707-982-0633

Email: jframe@bdo.com

On January 31, 2006, the Treasury Department and IRS announced their intention to issue regulations under Section 1503(d) of the Internal Revenue Code providing that taxpayers who fail to file any agreements, statements, rebuttals, requests or other information required under Section 1503(d) in a timely manner may seek relief for such failure under a reasonable cause standard similar to Prop. Treas. Reg. section 1.1503(d)-1(c)(1). Notice 2006-13 is effective on March 23, 2006.

Background

Under Section 1503(d), a dual consolidated loss may not be used by a dual resident corporation to reduce the taxable income of any other member of the corporation's affiliated group for any taxable year. For purposes of this provision, a dual resident corporation includes any 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.

In May 2005, proposed dual consolidated loss regulations were issued in an effort to revise the procedure a taxpayer must follow for failure to file any statements, rebuttals, requests, or other information required under section 1503(d) by replacing the requirement that taxpayers obtain 9100 relief with a reasonable cause standard. The proposed regulations under 1503(d) provided that a taxpayer who is permitted or required to make an election, agreement, statement, rebuttal, computation or other required information, but failed to make such filing in a timely manner, could satisfy the timeliness requirement if the taxpayer demonstrated to the appropriate parties, as set forth in the proposed regulations, that the failure was due to reasonable cause and not willful neglect.

The Director of Field Operations having jurisdiction over the taxpayer's tax return shall consider all the facts and circumstances in determining whether the taxpayer

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has reasonable cause and acted reasonable and in good faith. The taxpayer shall be notified in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time is needed to make such determination.

Affected Taxpayers

Those taxpayers who have failed to file, in a timely manner, any agreements, statements, rebuttals, requests or other information required under Section 1503(d).

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The IRS and Treasury have made the determination to allow taxpayers who fail to file any agreements, statements, rebuttals, requests, or other information as required under section 1503(d) in a timely manner, to cure such late filings either by seeking relief under Treasury Regulations Sections 301.9100-1 through -3 or electing to use the reasonable cause standard contained in Proposed Treasury Regulations Section 1.1503(d)-1(c)(1), as modified the Notice.

Qualification for the relief under the Notice is achieved by demonstrating to the Area Director, Field Examination, Small Business/Self Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the taxpayer's return for the taxable year, that the failure to file in a timely manner was due to reasonable cause and not willful neglect.

Modifications have been made to the requirements of Prop. Treas. Regs. Section 1.1503(d)-1(c)(1) to include: (1) For those taxpayers under examination for any taxable year for which they are requesting relief under Prop. Treas. Regs. Section 1.1503-1(c)(1) and the Notice, the taxpayer must provide a copy of the amended return and attachments to the IRS personnel conducting the examination; and (2) For those taxpayers not under examination for any taxable year for which they seek relief, the taxpayer must provide a copy of the amended return and attachments to the Director having jurisdiction of the taxpayer's return.

Taxpayers may use either 9100 relief or the relief offered under the Notice until the final regulations are published. However, taxpayers may not seek relief under both procedures. Those taxpayers who have letter ruling requests pending as of March 23, 2006 and have not yet received a determination on their request, may withdraw their request and use the reasonable cause procedure set forth in Prop. Treas. Reg. section 1.1503(d)-1(c)(1) and the Notice.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.