

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-106093-08

Date:
April 29, 2008

LEGEND

Parent =

Electing Foreign Subs =

StateX =

DateA =

DateB =

DateC =

Parent Official =

Dear _____ :

This letter responds to a letter dated February 11, 2008, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and Electing Foreign Subs to file an election to restore all of the value of Electing Foreign Subs to Parent under § 1.382-8(h) of the Income Tax Regulations with respect to an ownership change that occurred on DateA (“the Election”). Citations in this letter to regulations under § 382 of the Internal Revenue Code are to regulations in effect on DateA. Additional information was received in subsequent correspondence. The material information is summarized below.

For its taxable year that included DateA, Parent was a StateX corporation and it filed its Federal income tax return for that year on a stand-alone basis. On DateA, Parent and Electing Foreign Subs were component members of a controlled group under §1.382-8.

Parent was a loss corporation as defined in § 382 and the regulations thereunder. Parent experienced a § 382 ownership change on DateA. In accordance with the value adjustment rules of § 1.382-8, Parent’s value was reduced by the value of the Electing Foreign Subs for purposes of computing the § 382 limitation for the ownership change (§ 1.382-8(c)(1)).

Section 382(a) provides that the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the § 382 limitation for such year. Under § 382(b)(1), the § 382 limitation is determined by multiplying the value of the old loss corporation by the applicable long-term tax-exempt rate.

A special rule designed to prevent “double counting” by controlled groups is set forth in § 1.382-8. Section 1.382-8(c)(1) requires that the value of the stock of each component member of the controlled group be reduced by the value of the stock owned by that component member in any other component member. For purposes of applying § 1.382-8, a consolidated group, loss group, or loss subgroup is treated as a single corporation pursuant to § 1.382-8(f). Component members of a controlled group can elect under § 1.382-8(c)(2) to restore some or all of the value to the member whose value is reduced under § 1.382-8(c)(1). The election to restore value is made by following the procedures set forth in § 1.382-8(h) and is made in a separate statement entitled: “THIS IS AN ELECTION UNDER § 1.382-8 OF THE INCOME TAX REGULATIONS TO RESTORE ALL OR PART OF THE VALUE OF [insert name and E.I.N. of the electing member] TO [insert name and E.I.N. of the corporation to which value is restored].” The Election must follow all the procedures and include all the information specified in § 1.382-8(h).

The Election was required to be filed with Parent's income tax return for its tax year that included DateA. For various reasons, however, Parent and Electing Foreign Subs failed to make a valid election.

It is represented that: (i) Parent's Federal income tax return for the taxable year including DateA was timely filed on (or about) DateB; (ii) Parent's tax return that includes DateA was filed consistent with the Election having been properly and timely made; and (iii) all subsequent Federal tax returns have been, and will be, filed consistent with a valid Election having been made.

In DateC, it was discovered that a valid Election had not been filed. Shortly thereafter, the present request was submitted, under § 301.9100-3, for an extension of time to file a valid election.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.382-8(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Electing Foreign Subs to file the Election, provided it is shown that Parent and Electing Foreign Subs acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent and Parent Official explain the circumstances that resulted in the failure to properly file the Election. The information establishes: that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, a valid Election; that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service; and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that it has been shown that Parent and Electing Foreign Subs acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Parent and Electing Foreign Subs to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Electing Foreign Subs', and the members' of Parent's controlled group) Federal tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the amount of tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

Parent and Electing Foreign Subs should file the Election in accordance with § 1.382-8(h). Parent's return must be amended to attach the Election statement required by § 1.382-8(h). A copy of this letter should be attached to the Election statement. Alternatively, if Parent files its amended return electronically, Parent may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-106093-08) of this ruling letter.

CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction, matter, or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether or when an ownership change occurred; whether Parent and Electing Foreign Subs were component members of a controlled group; the amount of value, if any, that may be restored; or as to the values or amounts of NOLS or credits. In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent and Parent Official. However, the office of the Industry Director (or other appropriate Service office) should verify all essential facts. In addition, notwithstanding that an extension is granted under

§ 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)