

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:2-PLR-104505-03

Date:

April 30, 2003

Acquiring Parties =

H =

S =

Parent =

Foreign Subsidiary =

Date 1 =

Company Official =

Outside Professional =

State Z =

Country Y =

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This letter responds to a letter submitted on behalf of Parent and Foreign Subsidiary, dated January 2, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent and Foreign Subsidiary to file an election to restore value under § 1.382-8(h) of the Income Tax Regulations (hereinafter referred to as “the Election”). Additional information was received in a letter dated March 12, 2003. The material information submitted for consideration is summarized below.

Parent is a State Z corporation and, prior to an ownership change on Date 1, was the common parent of a consolidated group of corporations. Parent also owned all the stock of Foreign Subsidiary, incorporated under the laws of Country Y. Foreign Subsidiary is a controlled foreign corporation as defined in § 957(a) and is not engaged in conduct of a trade or business in the United States.

Acquiring Parties formed H, a State Z corporation. H, in turn, formed S, a wholly-owned State Z corporation. On Date 1, Parent merged into S with Parent being the surviving corporation. After the merger Parent and its eligible subsidiaries constituted a loss group for purposes of § 1.1502-91A(c)(1) with respect to their consolidated net operating losses. The merger resulted in an ownership change for Parent and its loss group. As the result of Parent’s ownership change, Parent’s value was reduced under § 1.382-8(c)(1) by the value of Foreign Subsidiary’s stock.

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 section 382 limitation for such year. Under § 382(b)(1), the section 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 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. 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 following the procedures set forth in § 1.382-8(h). Parent and Foreign Subsidiary are component members of a controlled group under § 1.382-8, and intended that all the value of Foreign Subsidiary be restored to Parent under § 1.382-8(c)(2). However, for various reasons, Parent and Foreign Subsidiary failed to make the Election in a timely manner.

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.

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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 Foreign Subsidiary to file the Election, provided Parent and Foreign Subsidiary show they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent, Foreign Subsidiary, Company Official and Outside Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent and Foreign Subsidiary reasonably relied on a qualified tax professional who failed to make, or advise Parent and Foreign Subsidiary to make the Election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

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

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its controlled group's and H's and the members of its controlled group's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, 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 taxpayers' 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' liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether an ownership change occurred; whether Parent and Foreign Subsidiary are component members of a controlled group; the amount of value, if any, that may be restored; or as to values or amounts of NOLs. In addition, we express no opinion as to the tax effects or consequences of filing the return or the Election late under the provisions of any

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other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or 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, Foreign Subsidiary, Parent's authorized representative, Foreign Subsidiary's authorized representative, Company Official, and Outside Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen

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