

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:B02

PLR-150389-04

Date:

December 14, 2004

TY:

Legend

Parent =

Foreign =

Domestic Subsidiary =

Electing Subsidiaries =

State X =
Year 1 =
Date 1 =
Date 2 =
Q =
V =
W =
Y =
Z =
Company Official =

Dear :

This letter responds to a letter submitted on behalf of Parent and Electing Subsidiaries, dated September 23, 2004, 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 Electing Subsidiaries to file an election to restore value under § 1.382-8(h) of the Income Tax Regulations (hereinafter referred to as “the Election”). The material information submitted in the request and subsequent correspondence is summarized below.

On Date 1, Parent, a State X corporation, was the common parent of a consolidated group of corporations (the “Parent Group”), and owned, directly or indirectly, 50 percent or more of the stock of each of the Electing Subsidiaries. Electing Subsidiaries are foreign entities treated as corporations for Federal tax purposes and are not engaged in the conduct of a trade or business within the United States. Domestic Subsidiary is a domestic subsidiary of one of the Electing Subsidiaries. The only asset held by Domestic Subsidiary is stock of a member of the Parent Group.

From Year 1 to Date 1, the Parent Group was owned by Foreign. On Date 1, Q shares of Parent’s V outstanding shares were sold in an initial public offering (the “IPO”), reducing Foreign’s ownership of Parent from W percent to Y percent (more than a 50 percentage point decrease). At the time of the IPO, the Parent Group had consolidated net operating loss carryovers of \$Z. Thus, the Parent Group constituted a loss group for purposes of § 1.1502-91(c)(1). As a result of the IPO, the Parent Group

underwent an ownership change as defined under § 382 of the Code, and the use of the Parent Group's net operating loss carryovers are subject to limitation under § 382(b). Pursuant to § 1.382-8(c)(1), the value of the Parent Group (treated as a single corporation for this purpose under § 1.382-8(f)) was reduced by the value of the stock it owned directly in Electing Subsidiaries; the value of each of the Electing Subsidiaries that owned directly other Electing Subsidiaries or Domestic Subsidiary was reduced by the value of such subsidiary; and Domestic Subsidiary's value was reduced by the value of the stock it owned in a member of the Parent Group.

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 directly owned by that component member in any other component member. Component members of a controlled group can elect to restore some or all of the value to another component member under § 1.382-8(c)(2). The election to restore value is made following the procedures set forth in § 1.382-8(h). 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).

The Parent Group and Electing Subsidiaries are component members of a controlled group under § 1.382-8. An election to restore the value of Electing Subsidiaries was due on Date 2. However, for various reasons, Parent and Electing Subsidiaries 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.

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 Subsidiaries to file the Election, provided Parent and Electing Subsidiaries 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.

The information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent and Electing Subsidiaries reasonably relied on a qualified tax professional who failed to make, or advise Parent and Electing Subsidiaries 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 Electing Subsidiaries 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 for Parent and Electing Subsidiaries to file the statement described in § 1.382-8(h) is granted under § 301.9100-3, until 45 days from the date on this letter. A copy of this letter must be attached to the statement.

The above extension of time is conditioned on the taxpayers' (Parent's and its controlled group members' 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 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, Domestic Subsidiary, and Electing Subsidiaries 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 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, Parent's authorized representative, and Company Official 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.

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)