

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-132744-05

Date:

October 11, 2005

**LEGEND**

Parent =

Electing Sub =

State A =

Date 2 =

Date 3 =

Date 4 =

Tax Professional =

Dear :

This letter responds to a letter dated May 24, 2005, submitted on behalf of Parent and Electing Sub. Parent and Electing Sub are requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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 submitted in

correspondence dated September 29 and October 6, 2005. The material information submitted for consideration is summarized below.

Parent, a State A corporation, is the common parent of an affiliated group which files a consolidated Federal income tax return. At the time of the transaction, Electing Sub was a component member of Parent's controlled group within the meaning of § 1.382-8(e)(2) and (3) and was a controlled foreign corporation as defined in § 957(a) of the Internal Revenue Code. Electing Sub has not been engaged in the conduct of a trade or business in the United States and has not filed a United States income tax return.

Parent experienced a § 382 ownership change on Date 2. Prior to the ownership change, Parent's consolidated group had generated a net operating loss ("NOL"). In accordance with the value adjustment rules of § 1.382-8, Parent's value was reduced for purposes of computing the § 382 limitation (§ 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. Component members of a controlled group can elect under § 1.382-8(c)(2) to restore some or all of the value to another component member. The election to restore value is made by following the procedures set forth in § 1.382-8(h).

The Election was required to be filed with Parent's income tax return for its tax year ending Date 3. However, for various reasons, Parent and Electing Sub failed to make a valid election. Subsequent to Date 4 (the last day for timely filing the election), it was discovered that a valid election had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessments under § 6501(a) has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year.

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 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. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when it is established that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the Government's interests. 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 Sub to file the Election, provided Parent and Electing Sub establish that 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.

Information, affidavits, and representations submitted by Parent, Electing Sub, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Parent and Electing Sub reasonably relied on a qualified tax professional who failed to make, or advise either Parent or Electing Sub 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 affidavits submitted and the representations that have been made, we conclude that Parent and Electing Sub have established that they acted reasonably and in good faith in failing to timely file the election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent and Electing Sub to file the Election.

The Election must be filed in accordance with § 1.382-8(h). In accordance with the regulation, Taxpayer's return for the taxable year in which the ownership change occurred must be amended to attach the Election. The Election statement should commence with the following language prescribed by § 1.382-8(h): 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 statement must be signed by the persons specified in the regulation. Also, the Election must include all the other information required by the regulation. See § 1.382-8(h) as to who must sign and what information must be included.

A copy of this letter should be attached to the Election statement.

The above extension of time is conditioned on the taxpayers' (Parent's and the consolidated 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

made timely (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 taxpayers' tax 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 or when an ownership change occurred; whether § 382(l)(5) applies to any ownership change; whether Parent and Electing Sub are or were members of a controlled group; the value of any corporation; the amount of value, if any, that may be restored; whether Parent is or was a loss corporation and the amounts of any NOLs. In addition, we express no opinion as to the tax effects or consequences of filing 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, Electing Sub, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any otherwise applicable penalties and interest continue to apply.

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

Pursuant to a power of attorney on file with this office, 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)