

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:1

PLR-155890-05

Date:

February 14, 2006

LEGEND:

Parent =

Parent's Successor =

Electing Sub =

\$X =

\$Y =

\$Z =

Year =

Date 1 =

Date 2 =

Date 3 =

Company Official 1 =

Company Official 2 =

Dear :

This letter responds to a letter dated October 31, 2005, 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 (by Parent's Successor) and Electing Sub to file an election to restore \$X of value to Parent under § 1.382-8(h) of the Income Tax Regulations (hereinafter referred to as the "Election"). Additional information was received in subsequent correspondences dated December 20, 2005, December 21, 2005, February 1, 2006, February 7, 2006 and February 8, 2006. The material information is summarized below.

In Year, Parent was the common parent of a consolidated group. Parent also owned all the stock of three life insurance companies, including Electing Sub. Parent did not make an election under § 1504(c)(2) to treat these corporations as includible corporations. Electing Sub was a component member of Parent's controlled group within the meaning of § 1.382-8(e)(2) and (3). Parent experienced a § 382 ownership change on Date 1 at which time Electing Sub had a value of \$Y. Also on that date, Electing Sub had \$Z of "pre-change capital losses" within the meaning of § 1.383-1(c)(2). It has been represented that other than the \$Z of pre-change capital losses, Electing Sub has no other pre-change losses within the meaning of § 1.382-2(a)(2). On Date 2, after several restructuring transactions which resulted in Parent becoming a wholly owned subsidiary of Parent's Successor, also a life insurance company, Parent's Successor liquidated Parent in a transaction described in § 332.

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 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

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 on or before Date 3, the due date of Parent's income tax return for its Year tax year. However, for various reasons, Parent and Electing Sub 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 (by Parent's Successor) and Electing Sub to file the Election, provided they show 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 government.

Information, affidavits, and representations submitted by Parent's Successor, Company Official 1 and Company Official 2 explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent's Successor and Electing Sub reasonably relied on a qualified tax professional who failed to make, or advise Parent's Successor and Electing Sub to make the Election, 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 Parent (by Parent's Successor) and Electing Sub have shown 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. Accordingly, an extension of time is granted under § 301.9100-3 until 45 days from the date on this letter for Parent (by Parent's Successor) and Electing Sub to file the

Election to restore \$X of value to Parent. A copy of this letter must be attached to the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Parent Successor's and the component members of Parent's controlled group) tax liability (if any) not being 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 Electing Sub were component members of a controlled group; or as to values or amounts of pre-change losses. 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 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's Successor, Company Official 1, and Company Official 2 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 ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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