

Number: **200636087**
Release Date: 9/8/2006
Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Numbers: 382.00-00, 9100.22-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:CORP:B03
PLR-114140-06
Date:
June 05, 2006

LEGEND:

Parent

Electing Sub 1

Electing Sub 2

Electing Sub 3

State

Country X

Date 1

Date 2

Company Official

Dear :

This letter responds to a letter dated January 30, 2006, 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 Electing Sub 1, Electing Sub 2, Electing Sub 3 ("Group") and Parent to file an election to restore value under § 1.382-8(h) of the Income Tax Regulations concerning an ownership change that occurred on Date 1 ("Election"). Citations in this letter to regulations under § 382 are to regulations in effect for the taxable year ending on Date 2. The material information is summarized below.

For its tax year ending on Date 2, Parent was a State corporation and the common parent of an affiliated group which filed a consolidated Federal income tax return. During the tax year ending on Date 2, each member of Group was a component member of Parent's controlled group within the meaning of §§ 1.382-8(e)(2) and (3). Each member of Group was a controlled foreign corporation as defined in § 957(a) and was not engaged in the conduct of a trade or business in the United States and did not file a United States Federal income tax return other than Electing Sub 3 which files a U.S. tax return, a protective Form 1120F, to preserve treaty benefits under the U.S.-Country X Income Tax Treaty.

Parent experienced a § 382 ownership change on Date 1. Prior to the ownership change, Parent's consolidated group had generated a consolidated net operating loss ("CNOL"). In accordance with the value adjustment rules of § 1.382-8, Parent's value was reduced 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 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 with Parent's income tax returns for its tax year ending on Date 2. However, for various reasons, Parent and Group 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 Group 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 and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent 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 Group 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 and Group to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Group's and the members of Parent's 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 Group were component members of a controlled group; the amount of value, if any, that may be restored or as to values or amounts of CNOLs. Lastly, 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 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 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.

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.

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

Sincerely,

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