

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:

PLR-119136-06

Date:

August 7, 2006

Legend:

Parent =

U.S. Sub =

Electing Subs =

Date =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated March 15, 2006, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations. The extension is being requested in order to allow Parent and Electing Subs to file an election ("Election") to restore value under § 1.382-8(h) of the Income Tax Regulations (as in effect for the taxable year ending on Date). The material information is summarized below.

In the year ending on Date, Parent was the common parent of an affiliated group that filed a consolidated Federal income tax return. In that year, all of the Electing Subs were component members of Parent's controlled group within the meaning of §§ 1.382-8(e)(2) and (3). Electing Subs are all controlled foreign corporations as defined in § 957(a) of the Internal Revenue Code ("Code"), are 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.

During the year ending on Date, and at all times since, Parent has indirectly owned 100 percent of the issued and outstanding stock of Electing Subs. On Date, Parent experienced a § 382 ownership change. At the same time, the taxable year of Parent and its affiliated group ended.

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.

Section 1.382-8 includes a rule to prevent "double counting" by controlled groups. 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 under § 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 return for its tax year ending on Date. However, for various reasons, Parent and Electing Subs 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 (§ 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 (§ 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 Subs to file the Election, provided they show that they acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professionals 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; that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service; and that the government will not be prejudiced if the 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 and Electing Subs 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 Electing Subs to file the Election.

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

taxpayer's 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 taxpayer's liability is lower (§ 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 Subs were component members of a controlled group; or the amount of value, if any, that may be restored. 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, Company Official, and Tax Professionals 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 representative.

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

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

cc: