

Internal Revenue Service

Number: **200807008**
Release Date: 2/15/2008
Index Number: 382.12-16, 9100.22-00

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:B03
PLR-135055-07

Date:
November 09, 2007

LEGEND:

Parent =

Electing Foreign Subs =

Date A =

State X =

Company Official =

Dear

This letter responds to a letter dated July 30, 2007, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time

for Parent and Electing Foreign Subs to file an election to restore all of the value of Electing Foreign Subs to Parent under §1.382-8(h) of the Income Tax Regulations with respect to an ownership change that occurred on Date A ("the Election"). Citations in this letter to regulations under §382 of the Internal Revenue Code are to regulations in effect on Date A. The information submitted is summarized below.

For its taxable year that included Date A, Parent was a State X corporation and the common parent of an affiliated group that filed a consolidated Federal income tax return. On Date A, Parent directly or indirectly owned at least fifty percent of the total combined voting power of or fifty percent of the total value of all classes of stock of Electing Foreign Subs. For the taxable year that includes Date A, Electing Foreign Subs had material business activities or value. Electing Foreign Subs never had a United States trade or business or United States source income, and accordingly never generated or succeeded to any United States tax losses. In addition, Electing Foreign Subs were never required to file a United States tax return, but two Electing Foreign Subs filed a protective Form 1120F pursuant to §1.882-4(a)(3)(vi) for the taxable year that includes Date A to preserve certain treaty benefits under applicable bilateral tax treaties.

Parent experienced a §382 ownership change on Date A. 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 that 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. 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 return for its taxable year that included Date A. For various reasons, however, Parent and Electing Foreign 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. 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 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 Foreign Subs 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 file the Election timely. The information establishes that the taxpayer requested relief under §301.9100 before the failure to make the regulatory election was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Electing Foreign Subs have shown 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 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 Foreign Subs to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Electing Foreign Subs', 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' 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 an ownership change occurred, 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. The Director, however, 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 or taxpayers 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 Parent's authorized representative.

Sincerely,

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

cc: