

## Internal Revenue Service

Number: **200808021**

Release Date: 2/22/2008

Index Number: 9100.22-00, 362.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:01

PLR-133866-07

Date:

November 16, 2007

### LEGEND

Holding =

Operating =

Sub =

Date 1 =

Date 2 =

Date 3 =

Company Official 1 =

Company Official 2 =

Tax Professional =

Dear

This is in response to a letter dated July 20, 2007, and subsequent correspondence, requesting an extension of time under §§301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Holding to file an election ("Election") under §362(e)(2)(C) of the Code. The material information is summarized below.

Holding was a closely-held limited liability company classified as a partnership for federal income tax purposes until Date 1, the effective date of an election under §301.7701-3(c) of the Income Tax Regulations, made on Date 2, to be classified as an association (the "Classification Change"). Holding is the sole member of Operating, an LLC which is disregarded for federal income tax purposes. Operating is in turn the sole shareholder of Sub, a corporation.

As a result of the Classification Change, Holding, as a partnership ("Old Holding"), was deemed to contribute all of its assets and liabilities to an association ("New Holding") in exchange for the stock of New Holding, with Old Holding immediately thereafter deemed to liquidate and distribute the stock of New Holding to the partners of Old Holding. See §301.7701-3(g)(1)(i).

The taxpayer has represented that the deemed contribution and exchange qualified as a transaction under §351 of the Code. On the effective date of the Classification Change, the aggregate basis of the transferred property substantially exceeded its aggregate fair market value. Section 362(e)(2)(A) generally provides that if property is transferred to a corporation as a capital contribution or in an exchange to which §351 applies and the aggregate basis of the transferred property exceeds its aggregate value immediately after the transaction, then the transferee corporation's basis in such property shall not exceed the fair market value of such property. Under §362(e)(2)(C), however, the transferor and transferee can make a joint election to reduce the transferor's basis in the stock received to its fair market value, and no reduction of the transferee's basis in the property received will be required. Section 362(e)(2)(C) provides that the Election shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable. Notice 2005-70, 2005-2 C.B. 694, provides guidance on how to make the Election, generally providing that the transferor may make a valid election by including the certification described therein on or with its tax return filed by the due date (including extensions) for filing its original return for the taxable year in which the transaction occurred.

The Election was required to be filed by Date 3. For various reasons, however, Old Holding failed to file the Election in a timely manner. The period of limitations on assessment under §6501(a) has not expired for Holding's or Sub's taxable year for which the Election should have been made 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 Internal Revenue 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 (§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. The Commissioner will grant requests for relief under §301.9100-3 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.

In this case, the time for filing the Election is fixed by Notice 2005-70. Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Holding to file the Election, provided Holding shows that it 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 Holding, Company Official 1, Company Official 2, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the IRS discovered the failure to make the Election and that the granting of the relief will not prejudice the government. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Holding has shown that it 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 Holding to file the Election with respect to the deemed §351 transfer described above.

This extension of time is conditioned on Holding's and Sub's tax liability (if any) not being lower, in the aggregate, for all years to which the Election applies than it would have been had the Election been timely made (taking into account the time value

of money). No opinion is expressed as to the tax liability for the years involved. 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 discussed in this letter. Specifically, no opinion is expressed as to whether the deemed contribution and exchange is described in §351.

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 have relied on certain statements and representations that Holding, Company Official 1, Company Official 2, and Tax Professional made 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 will continue to apply.

The ruling is directed only to the taxpayer requesting it. Under §6110(k)(3), this ruling may not be cited or used 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 the return that provides the date and control number of the letter ruling.

Sincerely,

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