

Year 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 11, 2008, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in a letter dated April 23, 2008. Parent is requesting an extension to file a “closing-of-the-books election” pursuant to § 1.382-6(b) of the Income Tax Regulations (the “Election”), with respect to an ownership change that occurred in Year 1. The material information is summarized below.

Parent was the common parent of a consolidated group (the “Group” or “Taxpayer”). The Group was composed of Parent, Sub 1, and Sub 2. The Group computed its consolidated Federal income tax liability using an accrual method of accounting and filed its consolidated Federal income tax returns on a calendar year basis.

On Date 1, Parent filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. During Date 2 and Date 3, Parent sold all of its fixed assets at a total net gain to unrelated third parties. Shareholder, a majority shareholder of Parent, claimed a worthless stock deduction with respect to its Parent stock on its Year 2 Federal income tax return. The worthless stock deduction resulted in Parent having an ownership change as defined in § 382(g) of the Internal Revenue Code (the “Code”) on Date 4.

The Election was due on Date 5, the extended due date for Parent’s Year 1 Federal consolidated income tax return, but for various reasons it was not filed. Subsequently this request was submitted, under § 301.9100-3 for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) of the Code has not expired for the Group’s taxable year for which Parent desires to make the Election, or for any taxable years that would be affected by the Election, had it been timely filed.

The following representations have been made in connection with this request:

(1) The Group was a “loss group” within the meaning of § 1.1502-91(c)(1) with respect to certain net operating loss carryovers.

(2) As a result of the worthless stock deduction, Parent underwent an ownership change

as defined in § 382(g)(1) on Date 4.

(3) All returns will be filed to reflect the Election if relief is granted by this ruling request.

(4) The Group will determine its alternative minimum taxable income and adjusted current earnings for the pre-change and post-change periods based on a closing-of-the-books election as of the ownership change date, and will elect out of ratable allocation.

Section 1.382-6(a) provides that, except as provided in paragraphs (b) and (d) of the section, a loss corporation must allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

Section 1.382-6(b)(1) provides that a loss corporation may elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

Section 1.382-6(b)(2) provides that a loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382-2T(a)(2)(ii) for the change year: "THE CLOSING-OF-THE-BOOKS ELECTION UNDER § 1.382-6(b) IS HEREBY MADE WITH RESPECT TO THE OWNERSHIP CHANGE OCCURRING ON [INSERT DATE]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change 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 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. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when it is established 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., § 1.382-6(b)(2)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes

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.

Information, representations, and affidavits submitted by Parent, Company Official, and Tax Professional 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. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Parent has shown it 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 to file the Election.

The above extension of time is conditioned on the 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 made timely (taking into account the time value of money).

No opinion is expressed as to the Group'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. In addition, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the Group's 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 Parent was a loss group, whether the stock of Parent was worthless, or whether an ownership changed occurred. Further, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or 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 information and affidavits provided by Parent, Company Official, and Tax Professional 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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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