

Internal Revenue Service

Department of the Treasury
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Person To Contact:

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Date:
April 26, 2010

Legend

Taxpayer =

Taxpayer Official =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated December 29, 2009, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayer, as the common parent of an affiliated group of corporations that files a consolidated Federal income tax return, is requesting an extension of time to file a “closing-of-the-books election” pursuant to § 1.382-6(b) of the Income Tax Regulations (the “Election”), with respect to a transaction (the change date transaction) that occurred on Date 1. Additional information was received in a facsimile dated March 18, 2010. The material information is summarized below.

On Date 1, Taxpayer underwent an ownership change. A closing-of-the-books election under § 1.382-6(b) was required to be filed on or before the due date, Date 3, of Taxpayer’s consolidated group's income tax return for the year in which the ownership

change occurred but, for various reasons, an election was not timely filed. Taxpayer filed the group's consolidated return electronically on Date 2. 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) has not expired for Taxpayer's consolidated group's taxable year in which the ownership change occurred or for any taxable years that would have been affected by the Election had it been timely filed.

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

- (1) Taxpayer's failure to make the Election under § 1.382-6(b) on its timely filed tax return has not been discovered by the IRS.
- (2) Taxpayer's consolidated group is a "loss group" within the meaning of § 1.1502-91(c)(1) with respect to certain net operating loss carryovers.
- (3) As a result of the change date transaction on Date 1, Taxpayer underwent an ownership change as defined in § 382(g)(1).
- (4) All necessary amended returns will be filed to reflect the Election if relief is granted by this ruling request.
- (5) Taxpayer's consolidated 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 on Date 1 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 § 1.382-11(a) 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.

Section 1.1502-91(c)(1) defines a loss group as a consolidated group that: (i) is entitled to use a net operating loss carryover to the taxable year that did not arise (and is not treated under § 1.1502-21(c) as arising) in a separate return limitation year; (ii) has a consolidated net operating loss for the taxable year in which a testing date of the common parent occurs (determined by treating the common parent as a loss corporation; or (iii) has a net unrealized built-in loss.

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., § 1.382-6(b)(2)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer shows 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.

Information, affidavits, and representations submitted by Taxpayer and Taxpayer Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i). The information also establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer 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 § 301.9100-1, UNTIL 90 DAYS FROM THE DATE ON THIS LETTER, for Taxpayer to file the Election.

WITHIN 90 DAYS OF THE DATE ON THIS LETTER, Taxpayer must file or amend, as applicable, Taxpayer's consolidated group's income tax returns for all open taxable

years affected by the Election and attach to the returns a copy of the Election, a copy of the information statement (if one has not already been attached), and a copy of this letter. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on: (1) Taxpayer's consolidated 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); (2) all members of Taxpayer's consolidated group closing their books as of the ownership change date pursuant to § 1.382-6(b)(3)(i); and (3) income or loss being allocated to the pre-change period not exceeding the taxable income or loss for the taxable year that includes the change date.

No opinion is expressed as to Taxpayer's consolidated group's tax liability for the years involved. A determination thereof will be made by the applicable 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 Taxpayer's consolidated group's tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether Taxpayer's consolidated group is a "loss group," as defined in § 1.1502-91(c)(1); (2) whether an ownership change, as defined in § 382(g) and § 1.1502-92(b)(1)(i), occurred on Date 1; or (3) any other tax consequences arising from the Election. 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 addition, 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

Sincerely,

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

cc: