

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-120754-11
Date: September 29, 2011

Legend:

Parent =

Institution =

Agency =

Acquirer =

State X =

State Y =

Date =

Dear

This ruling is in reply to a letter dated May 10, 2011, submitted by your authorized representative on behalf of Parent. Parent has requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 1.597-4(g) of the Income Tax Regulations to disaffiliate Institution from Parent's consolidated group, effective Date.

Facts

Parent is a State X corporation organized as a bank holding company to hold Institution, along with various other subsidiaries, and Parent has historically filed a consolidated federal income tax return with its various subsidiaries, including Institution. On Date, State Y's State Banking Department closed Institution, placed Institution in receivership, and appointed Agency as receiver. On the same date, Agency sold most of Institution's assets to Acquirer. The Purchase and Assumption Agreement between Agency and Acquirer includes a "Shared-Loss Agreement," whereby Agency agreed to bear a portion of the losses related to the transferred assets. Parent represents that, concurrent with Agency's appointment as receiver, Agency seized Institution's records, including Institution's financial and tax information.

Under § 597 of the Internal Revenue Code of 1986, as amended, and the accompanying regulations, any federal financial assistance provided by Agency to Acquirer in connection with the acquisition by Acquirer of Institution's assets results in taxable income to Institution. The regulations under § 597 permit a consolidated group to make an irrevocable election, on or before 120 days after the date an Institution was placed in Agency receivership, not to include the Institution in its affiliated group.¹ Due to Parent's lack of access to relevant financial and tax records, Parent was not able to make an informed decision on whether to make the election within the 120-day period.

Accordingly, Parent requests an extension of time to make an election under § 1.597-4(g) to not include Institution in its affiliated group, effective Date. Parent makes the following additional representations:

1. The Service has not discovered the absence of Parent's election not to include Institution in its affiliated group.
2. Parent and its subsidiaries are not seeking to alter a return position for which an accuracy-related penalty under § 6662 has been or could have been imposed at the time Parent is requesting relief.
3. Being fully informed of the required regulatory election and its related tax consequences, Parent never chose not to file the election.
4. Parent did not use hindsight in requesting relief.
5. Granting the requested relief will not result in Parent and its subsidiaries having a lower U.S. federal tax liability in the aggregate for the years to which the regulatory election applies than Parent would have had if the election were timely made (taking into account the time value of money).

In support of its ruling request, Parent has submitted affidavits from an officer and tax advisor regarding the events surrounding Institution's receivership.

Law and Analysis

¹ The regulations accompanying § 597 use the terms "Agency" and "Institution." See Treas. Reg. § 1.597-1(b) (defining terms used in the regulations). The parties herein referred to as Agency and Institution would likewise qualify as such under the regulations.

Section 1.597-4(g)(1) provides that a consolidated group of which an Institution is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency receivership. The consequences of making the election include a closing of the Institution's taxable year immediately before the Institution is placed in Agency receivership and inclusion of a toll charge, determined under § 1.597-4(g)(3), as ordinary income as its last item for that taxable year. Treas. Reg. § 1.597-4(g)(2)(iii).²

Section 1.597-4(g)(5) provides that a consolidated group makes the election to disaffiliate by sending a written statement by certified mail to the affected Institution on or before 120 days after its placement in Agency receivership. This section also provides the legend that must appear at the top of the statement and the information that must be included in the statement. Treas. Reg. § 1.597-4(g)(5)(i)(A). The consolidated group must also include a copy of the election statement and accompanying certified mail receipt as part of its first income tax return filed after the due date for the statement. Id.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return year.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines "regulatory election" as including an election whose due date is prescribed by regulation. Section 301.9100-2 provides automatic extensions of time for making certain elections, and § 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2. Since Parent's request for an extension of time to make an election under § 1.597-4(g) does not meet the requirements of § 301.9100-2, Parent's request is subject to the rules set forth in § 301.9100-3.

Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides evidence, including affidavits, to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government. Section 301.9100-3(b)(1) provides that, subject to paragraphs (b)(3)(i) through (iii), when a taxpayer applies for relief before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-

² The toll charge is equal to the excess of the Institution's liabilities over the adjusted bases of its assets immediately before the Institution is placed in Agency receivership. Treas. Reg. § 1.597-4(g)(3).

3(b)(3)(i)-(iii) provides that a taxpayer is deemed not to have acted reasonably and in good faith if: (i) the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief; (ii) the taxpayer opted not to file the election after being informed in all material respects of the required election and related tax consequences; or (iii) the taxpayer used hindsight in requesting relief. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Conclusion

Based on the facts and information submitted and the representations that have been made, we conclude that Parent has satisfied the requirements for granting a reasonable extension of time to elect under § 1.597-4(g) to not include Institution in its affiliated group, effective Date. In so doing, we note that Parent's lack of access to Institution's financial and tax records substantially impaired Parent's ability to make an informed decision as to whether to make this irrevocable election. Accordingly, Parent is granted 90 calendar days from the date of this letter to make the election in the manner prescribed in § 1.597-4(g)(5). Parent should also attach a copy of this letter to the election statement. In addition, if Parent makes the election, Parent must: (1) amend its consolidated return that included Date and include a copy of the election statement and the accompanying information, a certified mail receipt, and this letter; and (2) include a copy of the election statement and the accompanying information, a certified mail receipt, and this letter as part of its first income tax return filed after the due date as extended hereby.

The extension to file the election is conditioned on Parent's consolidated group's tax liability, including Institution's and its subsidiaries' tax liability, not being lower, in the aggregate, for all years to which the election applies, than it would have been if the election had been timely filed (taking into account the time value of money). No opinion is expressed concerning Parent's or Institution's tax liability for the years involved.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that this ruling 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 representatives.

Sincerely,

Robert A. Martin

Robert A. Martin

Senior Technician Reviewer, Branch 1

Office of Associate Chief Counsel

(Financial Institutions & Products)