

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

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PLR-143012-11

Date:

May 03, 2012

LEGEND

Parent =

Electing Subsidiaries =

Date 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated October 13, 2011, 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 the Electing Subsidiaries to file an election to restore all of the value of the Electing Subsidiaries to Parent under § 1.382-8(h) of the Income Tax Regulations (the "Election") with respect to an ownership change that occurred on Date 1. Additional information was submitted in letters dated March 9, 2012, April 17, 2012, and April 30, 2012. The material information submitted in the request and in subsequent correspondence is summarized below.

Parent was the common parent of a consolidated group. Parent and the Electing Subsidiaries (foreign corporations treated as corporations for Federal income tax purposes) were component members of a controlled group of corporations under § 1.382-8(a). Parent has represented that the Electing Subsidiaries were controlled foreign corporations as defined in § 957(a), were not engaged in the conduct of a trade or business in the United States, and did not file a United States federal income tax return.

Parent was a loss corporation and on Date 1, Parent underwent an ownership change. As a result, Parent's value was reduced under § 1.382-8(c)(1) by the value of the stock it owned in the Electing Subsidiaries.

Section 382(a) of the Internal Revenue Code (the "Code") provides that the amount of the taxable income of any new loss corporation for any post-change year which 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 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 under § 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 the member whose value is reduced under § 1.382-8(c)(1). The election to restore value is made following the procedures set forth in § 1.382-8(h).

The Election was required to be filed with Parent's consolidated income tax return for the taxable year that includes Date 1, a taxable year prior to the enactment of current § 1.382-8(h)(2). However, for various reasons, Parent and the Electing Subsidiaries failed to make the Election in a timely manner. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time of the request for relief.

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. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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., § 1.382-8(h)). Therefore the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and the Electing Subsidiaries to file the Election, provided Parent and the Electing Subsidiaries show 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 interests of the government.

Information, affidavits, and representations 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 requested relief before the failure to make the regulatory election was discovered by the Service and 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)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Parent and the Electing Subsidiaries 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 and the Electing Subsidiaries to file the Election with Parent's consolidated income tax return for the taxable year that includes Date 1.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its controlled group) 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.

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; whether Parent and the Electing Subsidiaries are component members of a controlled group; or the amount of value, if any, that may be restored. Further, 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 return or 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, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an 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.

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: