

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:3
PLR-131994-13

Date:
January 8, 2014

Legend

Foreign Parent =

Acquirer =

U.S. Parent =

Sub 1 =

Sub 2 =

Corp Z =

\$R =

\$S =

\$T =

\$U =

\$V =

\$W =

\$X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 5 =

Company Official =

Dear :

This letter responds to a letter dated July 17, 2013, and subsequent letters, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. U.S. Parent and Sub 1 are requesting the extension in order to allow U.S. Parent and Sub 1 to file an election to apportion a portion of the consolidated § 382 limitation to Sub 1 and Sub 2 under § 1.1502-95(c) of the Income Tax Regulations (hereinafter referred to as the “Election”). The material information submitted for consideration is summarized below.

Prior to Date 1, Foreign Parent indirectly owned U.S. Parent. U.S. Parent was the common parent of a consolidated group (the “U.S. Parent Group”). U.S. Parent owned all of the stock of Sub 2. On Date 1, Acquirer acquired Foreign Parent. As a result of the acquisition, U.S. Parent experienced an ownership change within the meaning of § 382 of the Internal Revenue Code (the “Code”).

On Date 2, U.S. Parent formed a new holding company, Sub 1. On Date 3, a date within Year 5, U.S. Parent contributed all the stock of Sub 2 to Sub 1. On Date 4, U.S. Parent distributed Sub 1 to its direct parent, Corp Z, a foreign corporation, in a transaction qualifying under §§ 368(a)(1)(D) and 355 (the “Spin-Off”). As a result of the

Spin-Off, Sub 1 and Sub 2 were entitled to file a consolidated Federal income tax return with Sub 1 as the common parent and in fact did file a consolidated return for the first tax year after the Spin-Off.

U.S. Parent and Sub 1 could have filed an election under § 1.1502-95(c) to apportion the § 382 limitation and the net unrealized built-in gain (“NUBIG”) existing at the time of the Date 1 ownership change to Sub 1 and Sub 2. The election to apportion all or part of a consolidated § 382 limitation and NUBIG is made following the procedures set forth in § 1.1502-95(f). The Election was required to be filed with U.S. Parent’s consolidated Federal income tax return for the tax year in which Sub 1 and Sub 2 ceased to be members of the U.S. Parent Group and with the first return of Sub 1 and Sub 2 that is filed after the close of the consolidated return year of the U.S. Parent Group of which Sub 1 and Sub 2 ceased to be members. However, for various reasons, U.S. Parent and Sub 1 failed to make the election in a timely manner. Despite the failure to make the election in a timely manner, all parties have filed their returns consistent with the making of the Election. U.S. Parent and Sub 1 have represented that they are not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time they requested relief and the new position requires or permits the Election.

At the time of the § 382 ownership change on Date 1, the U.S. Parent Group had a § 382 limitation, based on the value of U.S. Parent multiplied by the long-term tax-exempt rate, of \$R. The U.S. Parent Group also had a consolidated NUBIG of approximately \$S, of which at least \$T was available to be apportioned to Sub 1 and Sub 2. See § 1.1502-95(c)(2)(ii). At the end of Year 5, the U.S. Parent Group had a consolidated net operating loss (“CNOL”) of \$U, of which \$V was attributable to the U.S. Parent Group and \$W was attributable to Sub 2 pursuant to § 1.1502-21(b)(2)(iv).

The U.S. Parent Group has provided information that demonstrates that, using the 338 approach described in Notice 2003-65, 2003-2 C.B. 747, if the U.S. Parent Group apportioned \$X of the NUBIG to Sub 1 and Sub 2, the U.S. Parent Group would have a sufficient § 382 limitation when added to its original § 382 limitation of \$R to enable the U.S. Parent Group to fully utilize its portion of the CNOL, \$V, in the first year after Sub 1 and Sub 2 ceased to be members of the U.S. Parent Group. The U.S. Parent Group requests an extension of time to apportion \$X of the NUBIG to Sub 1 and Sub 2.

Under § 301.9100-2(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 regulations (*i.e.*, § 1.1502-95(f)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for U.S. Parent and Sub 1 to file the Election, provided they show that their actions were reasonable 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 U.S. Parent, Sub 1, and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that U.S. Parent and Sub 1 reasonably relied on a qualified tax professional who failed to make, or advise U.S. Parent and Sub 1 to make, a valid Election, and 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) and (v).

Based on the facts and information submitted, including the representations made, we conclude that U.S. Parent and Sub 1 have shown 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. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for U.S. Parent and Sub 1 to file the Election. U.S. Parent and Sub 1 should amend their returns to attach the Election, following the requirements of § 1.1502-95(f). A copy of this letter must be attached to the returns. Alternatively, Parent and Sub 1 may satisfy the requirement of attaching a copy of this letter by attaching a statement to their returns that provides the date and control number (PLR-131994-13) of this letter ruling.

The above extension of time is conditioned on the taxpayers' (U.S. Parent's consolidated group, Sub 1's, and Sub 2's) tax liability (if any) not being lower, in the aggregate, for all the 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 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 addition, 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 relied on certain statements and representations made by U.S. Parent, Sub 1, and Company Official under penalties of perjury. However, all of the essential facts must be verified. 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 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: