

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP

PLR-148071-13

Date:

May 23, 2014

TY

Legend

Acquiring =

Acquiring Sub =

Target =

Date1 =

Date2 =

\$V =

\$W =

\$X =

\$Y =

\$Z =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated November 19, 2013 (as supplemented with additional communication) that requested an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election under §1.1502-32(b)(4) of the Income Tax Regulations. More specifically, the letter requests an extension of time for Acquiring, the common parent of a consolidated group (the Acquiring group), to file an election to treat \$Z of the Consolidated Net Capital Losses (CNCLs) of the consolidated group of which Target was the common parent (the Target group) as expiring immediately before Target became a member of the Acquiring group. The material information submitted for consideration is summarized below.

At all relevant times, the Target and Acquiring groups filed consolidated Federal income tax returns on a calendar year basis. On Date1, the Target group underwent an ownership change that subjected its losses to an annual section 382 limitation of \$V (a total limitation of \$W). On Date2, Acquiring Sub, a member of the Acquiring consolidated group, purchased all the outstanding stock of Target. As a result, the Target group terminated and the members of the Target group became members of the Acquiring group. The Date2 acquisition was not an ownership change, but it did cause the Target group's CNCLs to be subject to the separate return limitation year rules. At that time of the acquisition, the Target group had CNCLs of \$X, which included all of its Date1 CNCLs plus \$Y of CNCLs attributable to periods after Date1 (and that were therefore not subject to the section 382 limitation). Accordingly, immediately before the Target group members joined the Acquiring group, the Target group had CNCLs of \$Z (\$X - \$W - \$Y) that would not be available for use by the Acquiring group under any circumstances. However, for various reasons, Acquiring failed to make an election under §1.1502-32(b)(4) to treat any of the CNCLs as expiring. Acquiring has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under §6662 at the time they requested relief.

When a corporation becomes a member of a consolidated group, the acquiring group may make an irrevocable election to treat all or a portion of the new member's loss carryovers as expiring immediately before the corporation becomes a member of the group. Section 1.1502-32(b)(4). By electing to treat a new member's loss carryovers as expiring immediately before it enters the group, the acquiring group can avoid the

decrease in stock basis (with respect to stock of the new member and any upper-tier members) that would otherwise result were the loss carryovers to expire unused.

Section 1.1502-32(b)(4)(iv) provides that the election described in §1.1502-32(b)(4) must be made in a separate statement that is included on or with the acquiring group's return for the year in which the corporation becomes a member. Accordingly, for Acquiring to have made an election to treat any CNCLs of the Target group as expiring, it would have had to do so in a statement filed on or with the Acquiring group's consolidated Federal income tax return for the tax year that included Date2.

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 that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Requests for relief will be granted under §301.9100-3 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 Acquiring to make an election to treat the Target group's CNCLs as expiring immediately before the Target group members became members of the Acquiring group is fixed by regulations (i.e., §1.1502-32(b)(4)(iv)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Acquiring to file such an election, provided that Acquiring establishes to the satisfaction of the Commissioner that its actions were reasonable and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and the granting of relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Acquiring, Company Official, and Tax Professionals explain the circumstances that resulted in Acquiring's failure to timely file an election under §1.1502-32(b)(4). The information establishes that Acquiring reasonably relied on a qualified tax professional who failed to make, or advise Acquiring to make, the election and 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) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Acquiring has shown it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and the granting of relief will not prejudice the interests of the government.

Accordingly, under §301.9100-3, an extension of time is granted. Acquiring has until 60 days from the date on this letter to make an election under §1.1502-32(b)(4) to treat \$Z of the Target group's CNCLs as expiring for all Federal income tax purposes immediately before the Target group members became members of the Acquiring group. Acquiring should make the election on an amended return for the year that includes Date2, in the manner prescribed in §1.1502-32(b)(4)(iv). On its return, Acquiring must attach either a copy of this letter or a statement that provides the date and control number (PLR-148071-13) of this letter ruling.

The above extension of time is conditioned on the taxpayers' (Acquiring's consolidated group's and Target's consolidated group'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 Acquiring, Company Official, and Tax Professionals 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 on whose behalf it was requested. 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
Acting Chief, Branch 2
Office of Associate Chief Counsel (Corporate)