

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:B06

PLR-106517-14

Date:

July 16, 2014

Legend

Successor-in-Interest =

Target =

Electing Subsidiary =

Acquiror =

Foreign Parent =

Date 1 =

Date 2 =

Date 3 =

a =

b =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 5, 2014, submitted by Successor-in-Interest on behalf of Target and Electing Subsidiary, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Target and Electing Subsidiary to file an election to restore value under § 1.382-8(h) of the Income Tax Regulations ("Election"). Additional information was submitted in letters dated April 21 and July 7, 2014. The material information submitted for consideration is summarized below.

Prior to and during the first two months of Year 1, Target and Electing Subsidiary were indirectly wholly owned by Foreign Parent. Target owned indirectly a percent of Electing Subsidiary. Electing Subsidiary was the common parent of a consolidated group ("Electing Subsidiary Consolidated Group"). (Throughout this letter, as the context requires, a reference to Electing Subsidiary includes a reference to the Electing Subsidiary Consolidated Group.) Target and the Electing Subsidiary were component members of a controlled group of corporations under § 1.382-8(a). On Date 1, Foreign Parent was acquired by Acquiror, the common parent of a consolidated group ("Acquiror Group"). On that day, Target had net operating loss carryforwards from prior years and Electing Subsidiary had foreign tax credit carryforwards ("FTC carryforwards") from prior years. As a direct result of being acquired, Target and Electing Subsidiary, both loss corporations, had an ownership change within the meaning of § 382(g).

On Date 2, Target and Electing Subsidiary merged into Successor-in-Interest. Successor-in-Interest is a subsidiary member of the Acquiror Group.

Section 382(a) of the Internal Revenue Code ("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 may 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). Section 1.382-8(c)(4) provides that appropriate additional adjustments must be made to prevent any duplication in value, including adjustments to reflect indirect ownership interests in another component member. The election to restore value is made following the procedures set forth in § 1.382-8(h).

As a result of the operation of § 1.382-8(c)(1), Target's value was reduced by the value of the stock it owned in Electing Subsidiary. Successor-in-Interest has requested an extension of time to make an election for Electing Subsidiary to restore \$b of value to Target. Successor-in-Interest has provided information that demonstrates that, based on information available at the due date of the Election, if Electing Subsidiary restored \$b in value, Electing Subsidiary would have had sufficient value to enable it to use all of its FTC carryforwards by the end of the Acquiror Group's tax year ending on Date 3.

The Election was required to be filed with Target's Federal income tax return for the taxable year that includes Date 1. However, for various reasons, the Election was not filed. Successor-in-Interest 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 and the new position requires or permits a regulatory election for which relief is requested.

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 Successor-in-Interest, on behalf of Target and Electing Subsidiary, to file the Election, provided Successor-in-Interest 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 Successor-in-Interest, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Successor-in-Interest requested relief before the failure to make the regulatory election was discovered by the Service. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Successor-in-Interest 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 sixty days from the date on this letter, for Successor-in-Interest, on behalf of Target and Electing Subsidiary, to file the Election.

The above extension of time is conditioned on Target's, Acquiror Group's, and Electing Subsidiary 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). No opinion is expressed as to the 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 Target and Electing Subsidiary are component members of a controlled group; or the value of Target or Electing Subsidiary. Further, we express no opinion as to the tax effects or consequences of filing the return or 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 Successor-in-Interest, 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, 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)