

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201511012**
Release Date: 3/13/2015

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.22-00, 1502.98-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-122082-14

Date:
November 18, 2014

Legend

Parent =

Sub =

Company Official/Tax Professional =

Date 1 =

R =

Dear :

This letter responds to a letter dated May 30, 2014, and subsequent materials submitted on behalf of Parent and Sub on July 25, 2014, and September 17, 2014, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent and Sub are requesting the extension in order to allow Parent and Sub to file an election to apportion a portion of the consolidated § 382 limitation to Sub 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, Parent was the common parent of a consolidated group (the Parent Group") that owned all the stock in Sub. On Date 1, Parent distributed Sub to its shareholders in a transaction qualifying under §§ 368(a)(1)(D) and 355 (the "Spin-Off").

Sub then became the common parent of its own consolidated group. At the time of the Spin-Off, the Parent Group had a consolidated § 382 limitation. Parent and Sub could have filed an election under § 1.1502-95(c) to apportion all or part of the § 382 limitation to Sub. The election to apportion all or part of a consolidated § 382 limitation is made following the procedures set forth in § 1.1502-95(f). The Election was required to be filed with Parent's consolidated Federal income tax return for the tax year in which Sub ceased to be a member of the Parent Group and with the first consolidated Federal income tax return of which Sub is the common parent filed after the close of the consolidated return year of the Parent Group. The submission includes representations that \$R of the consolidated section 382 limitation was intended to be apportioned to Sub; however, for various reasons, Parent and Sub failed to make the election in a timely manner. The submission also includes representations that Parent and Sub are not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662.

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 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 Parent and Sub 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, an affidavit, and representations submitted by Parent, Sub, and Company Official/Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The submission establishes that Parent and Sub reasonably relied on a qualified tax professional who failed to make, or advise Parent and Sub 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 Parent and Sub 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 Parent and Sub to file the Election. Parent and Sub 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 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-122082-14) of this letter ruling.

The above extension of time is conditioned on the taxpayers' 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 Parent, Sub, and Company Official/Tax Professional 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(s) 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)