

Internal Revenue Service

Number: **201545013**

Release Date: 11/6/2015

Index Number: 9100.22-00, 362.01-00

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:3

PLR-108930-15

Date:

August 04, 2015

Legend

Taxpayer =

FSub =

LLC =

State A =

Country A =

Date 1 =

Year 1 =

External Tax Professional =

Internal Tax Professional
& Company Official =

Dear _____ :

This letter responds to a letter dated March 10, 2015, submitted by your authorized representative, 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 Taxpayer to file an election under § 362(e)(2)(C) of the Internal Revenue Code (the "Code") with respect to the Date 1 Transfer (as defined below) (the "Election"). The material information is summarized below.

Taxpayer is a State A limited partnership that is classified as a partnership for federal income tax purposes. Taxpayer wholly owns FSub, a Country A company that is a controlled foreign corporation, as defined in § 957, (a "CFC"). LLC is a State A limited liability company that was organized on Date 1. LLC made an election to be treated as a corporation for federal income tax purposes effective as of its date of formation. FSub wholly owned LLC on Date 1.

On Date 1 (a date before September 4, 2013), FSub transferred property to LLC in a tax-free transfer described in § 351 (the "Date 1 Transfer"). At the time of the Date 1 Transfer, the property transferred had a tax basis exceeding fair market value.

Section 362(e)(2)(A) generally provides that if property is transferred to a corporation as a capital contribution or in an exchange to which § 351 applies and the aggregate adjusted basis of the transferred property would, if not for this provision, exceed the fair market value of such property immediately after the transaction, then the transferee corporation's basis in such property shall not exceed the fair market value of such property.

Under § 362(e)(2)(C), however, the transferor and transferee may make a joint election to reduce the transferor's basis in the stock received to its fair market value, and no reduction of the transferee's basis in the property received will be required. Section 362(e)(2)(C) provides that the Election shall be made at such time and in such form and manner as the Secretary may prescribe and, once made, shall be irrevocable. Section 362(e)(2)(A) does not apply, and the election under § 362(e)(2)(C) is not available, to exchanges subject to § 362(e)(1).

In effect on Date 1, Notice 2005-70, 2005-2 C.B. 694, provided guidance on how to make elections under § 362(e)(2)(C). Notice 2005-70 generally provided that, if the transferor is a CFC, its controlling U.S. shareholder(s), as defined in § 1.964-1(c)(5) of the Income Tax Regulations, may make a valid election for the CFC on or with each of their tax returns filed by the due date(s) (including extensions) for filing their original returns for the taxable year in which the transaction occurred. Generally, for transactions after September 3, 2013, rules for making elections under § 362(e)(2)(C)

are in § 1.362-4(d)(3). However, taxpayers may apply § 1.362-4 to transactions occurring after October 22, 2004.

Taxpayer intended to file the Election. The Election was required to be filed on or with Taxpayer's timely filed income tax return for Year 1. For various reasons, however, Taxpayer failed to file the Election in a timely manner. Taxpayer has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Taxpayer requested relief, and the new position requires or permits the aforementioned 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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. 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).

The time for filing the Election under § 362(e)(2)(C) is fixed by Notice 2005-70 or, if applicable, § 1.362-4(d)(3)(ii). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer 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 government.

Information, affidavits, and representations submitted by Taxpayer, External Tax Professional, and Internal Tax Professional & Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election, and that the request for relief was filed before the failure to timely 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 affidavits submitted and the representations made, we conclude that Taxpayer 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, to file the Election, in the manner described in Notice 2005-70 or § 1.362-4(d)(3), if applicable.

This extension of time is conditioned on the tax liability (if any) of FSub and LLC 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 discussed in this letter. Specifically, no opinion is expressed as to whether the Date 1 Transfer is described in § 351, nor is any opinion expressed concerning the basis or fair market value of any asset. 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 have relied on certain statements and representations that Taxpayer, External Tax Professional, and Internal Tax Professional & Company Official made under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

The letter 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 the 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)