

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:B01

PLR-136791-15

Date:

March 21, 2016

Legend

Common Parent =

Corp X =

State A =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear _____ :

This letter responds to a letter dated November 5, 2015, submitted on behalf of Common Parent, as common parent of the consolidated group of which Corp X was a member (the "Common Parent Consolidated Group"), requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Common Parent is requesting an extension of time to file an election under § 1.337(d)-7(c)(1) of the Income Tax Regulations (the "Election") that was required to be filed with the Common Parent Consolidated Group's Federal income tax return for the taxable year ending on Date 3. Additional information was submitted in a letter dated March 14, 2016. The information submitted is summarized below.

Corp X was formed on Date 1 as a State A corporation. On Date 2, Corp X underwent an initial public offering ("IPO"). Corp X elected to be a regulated investment company ("RIC") under § 851. As a result of the IPO and the RIC election, Corp X ceased to be a member of the Common Parent Consolidated Group.

A deemed sale election under § 1.337(d)-7(c) for Corp X to recognize gain and loss on the property it held as a C Corporation prior to its conversion to a RIC was required to be attached to the Common Parent Consolidated Group's return for the taxable year in which the deemed sale occurred. However, for various reasons, the Election was not filed. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) of the Code has not expired for the Common Parent Consolidated Group's taxable year for which it desires to make the Election, or for any taxable years that would be affected by the Election, had it been timely filed. Common Parent has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.

Section 1.337(d)-7(a)(1) provides, in part, that if property owned by a C corporation becomes the property of a RIC in a conversion transaction (as defined in § 1.337(d)-7(a)(2)(ii)), then § 1374 treatment will apply (as described in § 1.337(d)-7(b)), unless the C corporation elects deemed sale treatment with respect to the conversion transaction.

Section 1.337(d)-7(a)(2)(i) defines a C corporation, for purposes of § 1.337(d)-7, as a corporation that is not an S corporation, a RIC, or a REIT.

Section 1.337(d)-7(a)(2)(ii) defines the term conversion transaction as the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or a REIT.

Section 1.337(d)-7(c)(5) provides that a deemed sale election is made by a C corporation by attaching a statement, as described therein, to its return for the taxable year in which the deemed sale occurs.

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. 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).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-7(c)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Common Parent to file the Election, provided Common Parent establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, representations, and affidavits submitted by Common Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Common Parent reasonably relied on a qualified tax professional who failed to make, or advise Common Parent 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 that have been made, we conclude that Common Parent has shown that 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. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Common Parent to file the Election.

The above extension of time is conditioned on the Common Parent 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 made timely (taking

into account the time value of money). No opinion is expressed as to the Common Parent Consolidated Group's 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. Further, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. Specifically, no opinion is provided concerning the Common Parent Consolidated Group's Federal tax liability, if any, or Corp X's qualification as a RIC.

For purposes of granting relief under § 301.9100-3, we relied on certain information and affidavit provided by Common Parent, Company Official, and Tax Professional 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.

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.

Pursuant to a 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)