

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:B02

PLR-109017-17

Date:

May 31, 2017

Legend

Parent =

Date 1 =

Year 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated March 13, 2017, requesting on behalf of Parent an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time for the consolidated group of which Parent is the common parent to make a closing-of-the-books election under § 1.382-6(b) of the Income Tax Regulations (the "Election") with respect to an ownership change, within the meaning of § 382 of the Internal Revenue Code. Additional information was submitted in a letter dated May 5, 2017. The material information provided is summarized below.

Parent is the common parent of a consolidated group (the "Parent Group"). On Date 1, Parent Group experienced an ownership change as defined in § 382(g) (the "ownership change") and, consequently, §§ 382(a) and 383(a) limit its ability to offset post-change taxable income and liabilities by pre-change losses and credits.

An election under § 1.382-6(b) to close its books with respect to the ownership change was due by the due date (including extensions) of Parent Group's tax return for the Year 1 taxable year, but for various reasons, Parent did not make the Election. Subsequently, Parent submitted this request, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the election should have been filed or any subsequent taxable year. Parent has represented that Parent Group 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 of the request for relief.

Section 1.382-6(b)(1) allows a loss corporation to elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

Section 1.382-6(b)(2)(i) provides that a loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382-11(a) for the change year: "THE CLOSING-OF-THE-BOOKS ELECTION UNDER § 1.382-6(b) IS HEREBY MADE WITH RESPECT TO THE OWNERSHIP CHANGE OCCURRING ON [INSERT DATE]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change year.

Section 1.382-6(b)(3)(i) provides that if an election under § 1.382-6(b) is made with respect to an ownership change occurring in a consolidated return year, all allocations under this section with respect to that ownership change must be consistent with the election.

Section 1.382-6(e) provides that the principles of § 1.382-6 apply for purposes of allocating, under § 383, excess foreign taxes under § 904(c), current year business credits under § 38, and the minimum tax credit under § 53. The loss corporation must use the same method of allocation (ratable allocation or closing-of-the-books) for purposes of §§ 382 and 383.

Sections 1.1502-91, 1.1502-92 and 1.1502-93 set forth the rules for determining an ownership change under § 382 for members of consolidated groups and the § 382 limitations with respect to attributes described in § 1.1502-91(e) and (f). The rules generally provide that an ownership change and the § 382 limitation are determined

with respect to these attributes for the group (or loss subgroup) on a single entity basis and not for its members separately.

Section 1.1502-91(a)(2) provides that if the post-change year includes the change date, § 382(b)(3)(A) is applied so that the consolidated § 382 limitation (or subgroup § 382 limitation) does not apply to the portion of consolidated taxable income that is allocable to the period in the year on or before the change date, citing generally § 1.382-6 (relating to the allocation of income and loss).

Section 1.1502-98 provides that the rules contained in §§ 1.1502-91 through 1.1502-96 also apply for purposes of § 383, with appropriate adjustments to reflect that § 383 applies to credits and net capital losses.

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.

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 that it 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., § 1.382-6(b)(2)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided that Parent establishes to the satisfaction of the Commissioner 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.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent 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 affidavits submitted and representations made, we conclude that Parent has shown 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, we grant

an extension of time under § 301.9100-3, for sixty (60) days from the date on this letter, for Parent to file the Election.

Parent should file the election in accordance with § 1.382-6(b)(2). The Parent Group's return must be amended to attach the election statement required by § 1.382-6(b)(2). A copy of this letter should be attached to the election statement. Alternatively, if Parent Group files its amended return electronically, Parent Group may satisfy the this latter requirement by attaching a statement to the Parent Group's amended return that provides the date and control number (PLR-109017-17) of this letter ruling.

The above extension of time is conditioned on the Parent Group's tax liability (if any) not being lower, in the aggregate, for the year to which the Election applies, and all subsequent years, 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 amount of the Parent Group's tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax return involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or any other 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 effects resulting from, filing the Election late that are not specifically set forth in this letter.

For the purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to 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.

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
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)