

## 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-100198-17

Date:

June 06, 2017

In Re:

Taxpayer =

Transferee =

LLC =

Date 1 =

Year 1 =

State X =

State Y =

Company Official =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This letter responds to a letter dated December 28, 2016, submitted on behalf of Taxpayer, 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 section 362(e)(2)(C) of the Internal Revenue Code (hereinafter referred to as “the Election”) with respect to the Property Contribution (as defined below). Additional information was submitted in letters dated April 11 and April 25, 2017. The material information submitted for consideration is summarized below.

Taxpayer is a State X limited partnership. Taxpayer owned all the stock of Transferee, a State Y corporation.

As part of a larger series of transactions, on Date 1, Taxpayer transferred all of its interests in LLC, which was then wholly owned by Taxpayer, to Transferee. Because LLC was a disregarded entity of Taxpayer, this transaction was treated for federal tax purposes as a transfer of the property (Property) owned by LLC from Taxpayer to Transferee in a transaction described in section 362(a) but not in section 362(e)(1) (the “Property Contribution”). At the time of the Property Contribution, the aggregate basis of the Property exceeded its fair market value.

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

Under section 362(e)(2)(C), however, the transferor and the transferee may make a joint election to reduce the transferor’s basis in the stock received in the exchange 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) further 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 1.362-4(d)(3)(ii) of the Income Tax Regulations provides that a section 362(e)(2)(C) election is made by the transferor entity filing a “Section 362(e)(2)(C)

Statement” (as described in §1.362-4(d)(3)(i)) with its timely filed (including extensions) original U.S. return for the taxable year in which the transfer occurred.

Taxpayer intended to make 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. Subsequently this request was submitted, under § 301.9100-3, for an extension of time to file the Election. Taxpayer and Transferee represent that neither party is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time they requested 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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 § 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, Company Official, Tax Professional 1, and Tax Professional 2 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, for Taxpayer to file the Election, in the manner described by § 1.362-4(d)(3)(ii).

This extension of time is conditioned on the tax liability (if any) of Taxpayer and Transferee 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 concerning whether the Property Contribution qualified under section 351, or 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, Company Official, Tax Professional 1, and Tax Professional 2 made 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 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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