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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:04  
PLR-103871-23

Date:  
July 25, 2023

Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Date 1 =

Date 2 =

Company Official =

Tax Professionals =

Dear \_\_\_\_\_ :

This letter responds to a letter dated February 3, 2023, submitted on behalf of Parent, the common parent of a consolidated group, requesting an extension of time under §301.9100-3 of the Procedure and Administration regulations to file an election under section 382(l)(5)(G) and §1.382-9(i) not to have the provisions of section 382(l)(5) apply to an ownership change in a title 11 or similar case (the "Election"). The material information submitted for consideration is summarized below.

For the taxable year ending Date 1, Parent and its subsidiaries, which included Subsidiary 1 and Subsidiary 2, elected to file a consolidated return with Parent as the common parent (the "Parent Group"). Parent represented that Parent Group underwent an ownership change within the meaning of section 382(g) and §1.1502-92(b) on Date 2, and that Parent Group was a loss group (as defined in §1.1502-91(c)(1)). Immediately prior to Date 2, each of Parent, Subsidiary 1, and Subsidiary 2 were under the jurisdiction of a court in a title 11 case. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Section 382(l)(5) provides that, if certain requirements are met, section 382(a) shall not apply to an ownership change. If section 382(l)(5) applies, certain limitations are placed on a corporation. Section 382(l)(5)(G) provides that a new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of section 382(l)(5) apply. Any such election must be made by the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. Section 1.382-9(i).

The Election was required to be filed by the due date (including any extensions of time) of Parent Group's tax return for the taxable year ending Date 1, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted under §301.9100-3, for an extension of time to file the Election.

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. 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.*, §1.382-9(i)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent 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.

The information, affidavits, and representations submitted by Parent, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. See §301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that 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 75 days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the Parent 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 timely made (taking into account the time value of money). No opinion is expressed as to 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 returns involved.

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 on, and control number (PLR-103871-23) of, this letter ruling.

For the purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professionals. However, the Director 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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Thomas I. Russell*

Thomas I. Russell

Chief, Branch 1

Office of Associate Chief Counsel (Corporate)

cc: