

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:BO4

PLR-116185-23

Date:

December 12, 2023

Legend

Parent =

Target =

Date 1 =

\$X =

Company Officials =

Tax Professional =

Dear :

This letter ruling responds to a letter from your authorized representatives dated July 31, 2023, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to make an election. Parent is requesting an extension of time to file an election under §1.1502-32(b)(4) of the Income Tax Regulations to treat \$X of the loss carryovers of Target as expiring

immediately before Target became a member of the Parent consolidated group (the "Election"). The material information is summarized below.

For the year at issue, Parent was the common parent of a consolidated group ("Parent Group"). On Date 1, Parent acquired Target in a qualifying cost basis transaction within the meaning of §1.1502-32(b)(4)(ii)(A). At the time of the acquisition, Target had loss carryovers from separate return limitation years (within the meaning of §1.1502-1(f)). Due to a section 382 limitation, \$X of Target's loss carryovers would not be available for use by the Parent Group under any circumstances. For various reasons, however, Parent failed to make the Election in a timely manner. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the election. 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 1.1502-32(a)(1) provides rules for adjusting the basis of the stock of a subsidiary (S) owned by another member (M) to reflect S's distributions, and S's items of income, gain, deduction, and loss taken into account for the period that S is a member of the consolidated group. Section 1.1502-32(b)(2) provides that M's basis in S's stock is adjusted to reflect, among other things, S's noncapital, nondeductible expenses. Section 1.1502-32(b)(3)(iii) provides that an expiring loss carryover attributable to S is a noncapital, nondeductible expense.

Section 1.1502-32(b)(4)(i) provides that if a corporation has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all federal income tax purposes immediately before the corporation becomes a member of the consolidated group.

Section 1.1502-32(b)(4)(iv) provides that the election for each member whose loss carryover is deemed to expire must be made in a separate statement filed with the consolidated group's income tax return for the year the corporation becomes a member.

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 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 an election to treat all or a portion of the loss carryovers of a corporation as expiring before it becomes a member of a consolidated group is fixed by the regulations (i.e., §1.1502-32(b)(4)(iv)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes 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 Officials, and Tax Professional 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 established 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. Parent must file the Election in accordance with §1.1502-32(b)(4)(iv). The Parent Group's return for the tax year that includes Date 1 must be amended to attach the election statement required by §1.1502-32(b)(4)(iv). A copy of this letter must be attached to the election statement. Alternatively, if the Parent Group files its returns electronically, Parent may satisfy this latter requirement by attaching a statement to its return that provides the date on, and control number (PLR-116185-23) of, this ruling.

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.

We express no opinion with respect to whether Parent qualifies substantively to make the Election, the amount of any net operating losses of Target, the amount of any section 382 limitation, or the amount of net operating losses that could be utilized prior to their expiration. In addition, no opinion is expressed as to the tax effects or 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.

For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Parent, Company Officials, and Tax Professional. 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Thomas I. Russell

Thomas I. Russell

Chief, Branch 1

Office of Associate Chief Counsel (Corporate)

cc: