

Internal Revenue Service

Number: **202503010**

Release Date: 1/17/2025

Index Numbers: 9100.22-00, 382.00-00

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:1

PLR-109766-24

Date:

October 21, 2024

Legend

Parent =

Lossco =

Former Parent =

Date1 =

Date2 =

Company Officials =

Tax Professionals =

Dear _____ :

This letter responds to a letter dated May 23, 2024, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election under §1.382-9(i) of the Income Tax Regulations 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 is summarized below.

Parent is the common parent of an affiliated group of corporations that files consolidated federal income tax returns ("Parent Group"). As a result of a transaction on Date 1, Parent acquired Lossco (a loss corporation within the meaning of section 382(k)(1)) and Lossco underwent an ownership change as defined in section 382(g). Immediately before the ownership change on Date 1, Lossco and subsidiaries of Lossco were under the jurisdiction of a court in a title 11 case. Prior to joining the Parent Group, Lossco and subsidiaries of Lossco had been members of the Former Parent consolidated group.

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 (defined in section 382(k)(3)) may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of section 382(l)(5) apply.

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 2, 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. 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.

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 Officials, 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. Parent should file the Election by filing an amended return for Parent Group for the taxable year ending Date 2 and attaching the statement described in §1.382-9(i). A copy of this letter should be attached to the Election statement. 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-109766-24) of, this letter ruling.

The above extension of time is conditioned on the taxpayer's (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 taxpayer's tax liability for the years involved. A determination thereof will be made 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. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Parent, Company Officials, 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.

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 Ian Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: