

**Internal Revenue Service**

Number: **200542028**

Release Date: 10/21/2005

Index Number: 382.00-00, 9100.22-00

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:B02

PLR-135804-05

Date:

July 12, 2005

TY:

Legend

Parent =

Electing Subsidiary =

Year 1 =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter submitted on behalf of Parent and Electing Subsidiary, dated March 30, 2005, 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 Parent and Electing Subsidiary to file an election to

restore value under § 1.382-8(h) of the Income Tax Regulations (hereinafter referred to as "the Election"). Additional information was received in letters dated June 6 and June 8, 2005. The material information submitted in the request and subsequent correspondence is summarized below.

At the end of Year 1, Parent was the parent of a controlled group of corporations (the "Parent Group"), and owned, directly or indirectly, 50 percent or more of the stock of Electing Subsidiary. Electing Subsidiary is a foreign entity treated as a corporation for Federal tax purposes and is not engaged in the conduct of a trade or business within the United States. Parent underwent an ownership change, as defined under § 382 of the Code, on Date 1. Therefore, the use of the Parent's net operating losses for carryovers are subject to limitation under § 382(b) for Year 1.

Pursuant to § 1.382-8(c)(1), the value of Parent stock was reduced by the value of the stock it owned directly in Electing Subsidiary.

Section 382(a) provides that the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the § 382 limitation for such year. Under § 382(b)(1), the § 382 limitation is determined by multiplying the value of the old loss corporation by the applicable long term tax-exempt rate. A special rule designed to prevent "double counting" by controlled groups is set forth in § 1.382-8. Section 1.382-8(c)(1) requires the value of the stock of each component member of the controlled group be reduced by the value of the stock directly owned by that component member in any other component member. Component members of a controlled group can elect to restore some or all of the value to another component member under § 1.382-8(c)(2). The election to restore value is made following the procedures set forth in § 1.382-8(h).

Parent and Electing Subsidiary are component members of a controlled group under § 1.382-8. The election to restore the value of Electing Subsidiary was due on Date 2. However, for various reasons, Parent and Electing Subsidiary failed to make the Election in a timely manner.

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 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., § 1.382-8(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Electing Subsidiary to file the Election, provided Parent and Electing Subsidiary show they 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.

The 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 and Electing Subsidiary reasonably relied on a qualified tax professional who failed to make, or advise Parent and Electing Subsidiary to make the Election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Electing Subsidiary have shown they 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 for Parent and Electing Subsidiary to file the statement described in § 1.382-8(h) is granted under § 301.9100-3, until 45 days from the date on this letter. A copy of this letter must be attached to the statement.

The above extension of time is conditioned on the taxpayers' (Parent's and Electing Subsidiary'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 taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' liability is lower. Section 301.9100-3(c).

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. In particular, we express no opinion with respect to whether an ownership change occurred; whether Parent and Electing Subsidiary are component members of a controlled group; the amount of value, if any, that may be restored; or as to values or amounts of NOLs. 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 relied on certain statements and representations made by Parent, Parent's authorized representative,

Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: