DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 12 2011

201140030

UIL Numbers: 9100.00-00 and 414.18-00

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SE:T:EP:RA:T1

Attention: *************************

LEGEND:

Company A = *************************

Company B = *************************

Plan X = ************************************

Plan Y = ************************************

Dear ***********:

This is in response to a letter dated *****************, as supplemented by correspondence dated *********************, submitted on your behalf by your authorized representative, in which you request a ruling granting an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations (the "regulations") to file the notice of election described in Section 3 of Revenue Procedure 93-40, 1993-2 C.B. 535 ("Rev. Proc. 93-40") to be treated as operating qualified separate lines of business ("QSLOBs") under section 414(r)(2) of the Internal Revenue Code (the "Code"). You submitted the following facts and representations in support of your ruling request.

Company A is an airline with its principal offices in ************, and its United States offices in Company B is a specialized food services company with its principal offices located in the United States. Company B is a wholly owned subsidiary of Company A. You represent that Company A and Company B are separate lines of business.

Company A and Company B each maintain 3 tax qualified retirement plans under section 401(a) of the Code. You represent that other than Company A's failure to file a timely election, Company A and Company B satisfy the requirements under section 414(r).

Based on the above facts and representations, you request a ruling that under section 301.9100-3 of the regulations, Company A be granted an extension of time to file the Form 5310-A with respect to the 2004 testing year.

Code section 414(r) provides rules for determining whether an employer operates a QSLOB for purposes of applying sections 129(d)(8), 401(a)(26), and 410(b) (including section 401(a)(4)).

Code section 414(r)(1) requires that an employer operate the separate line of business for bona fide business purposes.

Under Code section 414(r)(2), the line of business must have at least 50 employees, the employer must notify the Secretary that such line of business is being treated as separate, and the line of business must satisfy the guidelines prescribed by the Secretary or the employer must receive a determination from the Secretary that the line of business is separate ("administrative scrutiny requirement").

Section 1.414(r)-1(b)(1) of the regulations provides that an employer is treated as operating a QSLOB under Code section 414(r) only if all property and services provided by the employer to its customers are provided exclusively by the QSLOB. Thus, once an employer has determined it has a qualified separate line of business, no portion of the employer may remain that is not included in a qualified separate line of business.

Section 1.414(r)-1(b)(2)(i) of the regulations provides that a QSLOB must constitute a line of business under paragraph (b)(2)(ii), a separate line of business under paragraph (b)(2)(iii) and a qualified separate line of business under Code section 414(r)(2) and paragraph (b)(2)(iv) relating to the 50 employee, notice, and administrative scrutiny requirements.

Section 1.414(r)-1(d)(2) of the regulations provides that the provisions of sections 1.414(r)-2 through 1.414(r)-11 are to be interpreted in a manner consistent with the purpose of Code section 414(r), i.e., to recognize an employer's operation of a QSLOB for bona fide business reasons.

Section 1.414(r)-5(a) of the regulations provides that a separate line of business as determined under section 1.414(r)-3 satisfies the administrative scrutiny requirement if the SLOB satisfies any of the safe harbors in paragraph (b), which implements the statutory safe harbor, and paragraphs (c) through (g) (the regulatory safe harbors).

Section 1.414(r)-4(c) of the regulations provides that the notice requirement under Code section 414(r)(2)(B) must take the form and be filed at the time prescribed by the Commissioner in revenue procedures or other guidance of general applicability.

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of Code section 414(r)(2)(B). Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the employer's plan that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, the notice cannot be modified, withdrawn, or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

Sections 301.9100-1(a) and 301.9100-1(c) of the regulations generally provide that the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory or statutory election pursuant to the standards set forth in sections 301.9100-2 and 301.9100-3. Such extension of time is only available for elections that a taxpayer is otherwise eligible to make.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) of the regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

Section 301.9100-3(b)(1) of the regulations provides that, except as otherwise provided in paragraphs (b)(3)(i) through (iii), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

(i) Requests relief under this section before the failure to make the regulatory election is discovered by the Service;

(ii) Failed to make the election because of intervening events beyond the taxpayer's control;

(iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;

(iv) Reasonably relied on the written advice of the Service; or

(v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c) of the regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability.

Section 301.9100-3(e)(4) of the regulations provides that the taxpayer must state whether the taxpayer's return for the taxable year in which the election should have been made or any taxable years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court.

According to the facts, representations, and affidavits submitted, until 2009 Company A's and Company B's contracted benefits professionals were unaware that Company B was a wholly owned subsidiary of Company A. Upon testing Company A's plans under section 410(b) of the Code, Company A's benefits professionals determined that Company B's Plan Y, when aggregated with Company A's Plan X, failed to satisfy section 401(a)(26) of the Code for the 2008 calendar year. However, it was also determined that Plan Y would not have failed section 401(a)(26) on a standalone basis. Company A then obtained legal counsel and was advised that it should have made a QSLOB election with respect to the 2004 calendar year, and continue this election to the present time. Company A promptly filed this request for relief under section 301.9100-3 of the regulations to allow them to retroactively request a QSLOB election. Thus, based on the information and representations submitted, Company A satisfies clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations.

Moreover, Company A and Company B have operated as if the election had been made and filed their Forms 5500 and tested their plans in a manner consistent with the fact that neither the benefits professionals for Company A nor for Company B were aware until 2009 that Company B was a wholly owned subsidiary of Company A. Although the 2004 and 2005 tax years are closed under the statute of limitations, granting relief only clarifies the position that was consistently taken by Company A and Company B and conforms the documentation to the operation of Company A and Company B with respect to their qualified plans. Thus, granting relief will not prejudice the interests of the Government. Because the taxpayer has acted reasonably and in good faith and the granting of relief will not prejudice the interests of the Government, we grant Company A a period of 60 days from the date of this ruling to file the Form 5310-

A for the 2004 testing year, and such filing will be deemed a timely filing under Section 3 of Rev. Proc. 93-40 with respect to such year.

This ruling does not address whether Company A and Company B otherwise satisfy the requirements to be treated as QSLOBs for the 2004 testing year and subsequent years. No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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

If you wish to inquire about this ruling, please contact ***************** (Identification Number ***************) at (***) ***-****.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1