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:
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Refer Reply To:
CC:CORP:B06
PLR-128319-11

Date:
November 14, 2011

Legend

Parent =

Sub 1 =

Foreign Parent =

Sub 2 =

$W =

$X =

$Y =

$Z =

Country A =

Country B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Company Official =

Dear :

This letter responds to a letter dated June 30, 2011, 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 Sub 1 to file an election to apportion the consolidated §382 limitation to Sub 1 under §1.1502-95(c) of the Income Tax Regulations (hereinafter referred to as the "Election"). Additional information was received in a letter dated September 14, 2011. The material information submitted for consideration is summarized below.

Parent is a holding company and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. All of the Parent stock is owned directly or indirectly by Foreign Parent, a publicly traded holding company incorporated in Country A.

Sub 1 is a Country B company that has elected under §953(d) of the Internal Revenue Code to be treated as a domestic corporation. Since Sub 1's formation, its business operations have generated significant amounts of unused net operating losses ("NOLs") for federal income tax purposes.

Sub 1 was a member of an affiliated group of corporations that filed a consolidated federal income tax return of which Sub 2 was the common parent (the "Sub 2 Group"). On Date 1, Foreign Parent acquired all the shares of Sub 2 common stock, resulting in an ownership change of the Sub 2 Group within the meaning of §382. At the time of the ownership change, Sub 1, taking into account NOL carryovers from prior years and the relevant loss allocation rules applicable to the Year 1 taxable year, had approximately $W of pre-change loss under §§382(d)(1)(A) and (B), all of which constituted dual consolidated losses under §§953(d) and 1503(d) and separate return limitation year losses under §1.1503-2(d)(2). As such, the losses could only be used to offset Sub 1's income in future periods.

At the time of the ownership change, the remaining members of the Sub 2 Group had no NOL carryovers, but, taking into account the relevant loss allocation rules applicable to the Year 1 taxable year, did have approximately $X of pre-change loss under §382(d)(1)(B). The Sub 2 Group did not have a net unrealized built-in loss (within the meaning of §382(h)(3)(A)) as of the time of the ownership change.

Subsequent to the ownership change Foreign Parent formed Parent and contributed all of the shares of Sub 2 to it in a §351 transaction, resulting in Parent succeeding Sub 2 as the common Parent of the Sub 2 Group.

On Date 2, after a series of transactions, Sub 2 contributed the stock of Sub 1 to a newly formed corporation whose stock was distributed to Parent and then to Foreign Parent pursuant to distributions under §355 (the "Spin-Offs"). After the Spin-Offs, Sub 1 ceased being a member of the Sub 2 Group and was not a member of any other consolidated group for the taxable year ending Date 3. Sub 1 has been in a loss position since the time of the ownership change and has not been able to use any of the Sub 1 pre-change losses. Prior to the Spin-Off, the Sub 2 Group used the entire Sub 2 Group pre-change loss under the rules of §382. Thus, as of the time of the Spin-Off the Sub 2 Group had no remaining unused Sub 2 Group pre-change losses, Sub 1 still had approximately $Y of Sub 1 pre-change losses, and the Sub 2 Group had approximately $Z of unused, and unusable by the Sub 2 Group, consolidated §382 limitation relating to the ownership change. None of the unused consolidated §382 limitation has been used since the Spin-Off.

The election to apportion all or part of a consolidated §382 limitation is made following the procedures set forth in §1.1502-95(f). The Election was required to be filed with the consolidated Federal income tax return for the tax year ending Date 3. However, for various reasons, Parent 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 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., §1.1502-95(f)(3)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent and Sub 1 to file the Election, provided they show that their actions were reasonable 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, Sub 1, and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent and Sub 1 reasonably relied on a qualified tax professional who failed to make, or advise Parent and Sub 1 to make, a valid Election, and the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Sub 1 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 is granted under §301.9100-3, until 45 days from the date on this letter, for Parent and Sub 1 to file the Election, following the requirements of §1.1502-95(f). A copy of this letter must be attached to the Election.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group, and Sub 1's) tax liability (if any) not being 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.

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 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, Sub 1, and Company Official under penalties of perjury. However, all of the essential facts must be verified. 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 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, a copy of this letter is being sent to your authorized representatives.

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 and control number of the letter ruling.

Sincerely,

Ken Cohen

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