Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:5
PLR-139671-12

Date:
March 12, 2013

Legend

Taxpayer =

LLC =

Sub A =

Sub B =

Sub C =

Sub D =

Sub E =

Sub F =

Sub G =

State A =

Country B =

Date 1 =

Amount 1 =

Amount 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated September 14, 2012, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file certain elections. In particular, Taxpayer is requesting an extension of time for the consolidated group of which Taxpayer was the common parent and is currently the agent (pursuant to § 1.1502-77(e)(3)(i)), to file the following elections (collectively, the "Elections") for the short tax year ended Date 1: (A) elections under § 1.1502-36(d)(6)(i)(A) to reduce the stock bases in Sub F and Sub G in amounts equal to their respective attribute reduction amounts; (B) an election under § 1.1502-36(d)(6)(i)(A) to reduce the stock basis of Sub D by Amount 1; and (C) an election pursuant to § 1.1502-36(d)(4)(ii)(A)(1) to specifically allocate Sub D's remaining attribute reduction amount of Amount 2 to reduce its Category B attributes (within the meaning of § 1.1502-36(d)(4)(i)(B)). Additional information was submitted in documents dated November 5, 2012, December 6, 2012, and February 8, 2013. The material information submitted for consideration is summarized below.

Taxpayer was the common parent of a consolidated group (the "Taxpayer Group"). Taxpayer was wholly owned by LLC, a State A LLC that was taxable as a partnership for U.S. federal income tax purposes. Taxpayer owned all the stock of Sub A, which owned all the stock of Sub B, which owned all the stock of Sub C and Sub D, a Country B corporation that has elected under § 953(d) to be treated as a domestic corporation for U.S. federal tax purposes. Sub C owned all the stock of Sub E, which owned all the

stock of Sub F and Sub G. On or about Date 1, Sub E distributed all the stock of Sub F and Sub G to Sub C. Sub C distributed all the stock of Sub F and Sub G to Sub B. Sub B distributed all the stock of Sub D, Sub F, and Sub G (collectively, the "Loss Subsidiaries") to Sub A. Sub A distributed all the stock of the Loss Subsidiaries to Taxpayer. Subsequently, after a series of contributions of the Loss Subsidiaries to other entities owned directly or indirectly by Taxpayer, the Loss Subsidiaries were indirectly distributed to LLC and then to LLC's investors. Then, on Date 1, LLC sold all of the Taxpayer stock to a real estate investment trust ("REIT"). As a result of the REIT's acquisition of Taxpayer, Taxpayer and its remaining subsidiaries became qualified REIT subsidiaries within the meaning of § 856(i)(2). Under § 856(i)(1)(A), upon becoming qualified REIT subsidiaries Taxpayer and its corporate subsidiaries were no longer treated as separate corporations, and the Taxpayer Group no longer contained any includible corporations within the meaning of §1504(b) and therefore terminated.

Sub E's distribution of the stock of Sub F and Sub G, and Sub B's distribution of the stock of Sub D, resulted in capital losses to Sub E and Sub B that were subject to the unified loss rule of § 1.1502-36. The indirect distribution of the Loss Subsidiaries to LLC resulted in the disaffiliation of the Loss Subsidiaries from the Taxpayer Group.

Elections under § 1.1502-36 with respect to Sub E's and Sub B's distributions of the stock of the Loss Subsidiaries were due by the due date of the Taxpayer Group's consolidated return for the year that included the distributions. However, for various reasons, no elections were made. Subsequently, Taxpayer submitted this request, under § 301.9100-3, for an extension of time to file the Elections. The period of limitations on assessment under § 6501(a) has not expired for the Taxpayer Group's tax return for the tax year that included the date of the distributions.

Taxpayer 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 § 6662 at the time Taxpayer requested relief and the new return position requires or permits a regulatory election for which relief is requested.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Section 1.1502-36(b) and (c) provides rules that may reduce the basis that each consolidated group member ("M") has in its loss shares of stock in a subsidiary ("S") when the stock is transferred. If the S stock is still loss stock after the application of § 1.1502-36(b) and (c), the rules of § 1.1502-36(d) generally reduce the tax attributes of S to the extent they duplicate a net loss on shares of S stock transferred by members. These rules apply, and any required adjustments are given effect, immediately before the transfer of the S stock. Section 1.1502-36(a).

Under the attribution reduction regime, S's attributes will be reduced by the attribute reduction amount, as defined in § 1.1502-36(d)(3), immediately before the transfer unless the attribute reduction amount is less than five percent of the aggregate value of the S shares transferred. Section 1.1502-36(d)(2).

S's attributes available for reduction are Category A (capital loss carryovers), Category B (net operating loss carryovers), Category C (deferred deductions), and Category D attributes (basis of assets other than assets identified as Class I assets in § 1.338-6(b)(1)). Section 1.1502-36(d)(4)(i). If S's attribute reduction amount is less than S's total Category A, Category B, and Category C attributes, the common parent ("P") may elect to specify the allocation of S's attribute reduction amount among such attributes. To the extent not specified, the attribute reduction amount will be applied to reduce Category A attributes first (oldest to newest), then Category B attributes (oldest to newest), and finally Category C attributes (proportionately). Section 1.1502-36(d)(4)(ii)(A)(1).

In addition, notwithstanding the general attribute reduction rule described above, P may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. Under § 1.1502-36(d)(6)(i), P may elect (A) to reduce all or any portion (including any portion in excess of a specified amount) of members' bases in transferred loss shares of S stock; (B) to reattribute all or any portion (including any portion in excess of a specified amount) of S's Category A, Category B, and Category C attributes, to the extent they would otherwise be subject to reduction under § 1.1502-36(d); or (C) any combination thereof.

Section 1.1502-36(e)(5) states that the elections provided by § 1.1502-36 are irrevocable and made in a statement entitled "Section 1.1502-36 Statement" that must be included on or with the group's timely filed return (original or amended, if filed by the due date of the return, including extensions) for the taxable year of the transfer of the subsidiary stock to which the election relates.

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). 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 elections by a consolidated group to (A) specify the allocation of a subsidiary's attribute reduction amount among its Category A, Category B, and Category C attributes under § 1.1502-36(d)(4)(ii)(A)(1); and (B) reduce a member's basis in its loss shares of subsidiary stock under § 1.1502-36(d)(6)(i)(A) are regulatory elections. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Elections, provided Taxpayer establishes to the satisfaction of the Commissioner 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 Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Elections, and the request for relief was filed before the failure to timely make the Elections 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 affidavits submitted and the representations made, we conclude that Taxpayer has shown 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, provided the Taxpayer Group qualifies substantively to file the Elections, we grant an extension of time under § 301.9100-3, until ninety (90) days from the date on this letter, for Taxpayer to file the Elections.

Taxpayer should file the Elections in accordance with § 1.1502-36(e)(5). Taxpayer Group's returns must be amended to attach the election statements required by § 1.1502-36(e)(5). A copy of this letter must be attached to the election statement. Alternatively, if Taxpayer files its returns electronically, Taxpayer may satisfy the requirement of attaching a copy of this letter by attaching a statement to the Taxpayer Group's amended return that provides the date and control number (PLR-139671-12) of this letter ruling.

The above extension of time is conditioned on the Taxpayer Group's and each of its members' (both before and after the year of the transactions) tax liabilities, if any, not being lower in the aggregate for all years to which the Elections apply than they would have been if the Elections had been timely made (taking into account the time value of

money). We express no opinion as to the Taxpayer Group's or any of its members' tax liabilities. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Taxpayer qualifies substantively to make the Election. 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 Internal Revenue Code or 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 this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Taxpayer, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

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

Pursuant to the 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)