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:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-104395-17

Date:
July 28, 2017

Company A =

Company B =
Company C =

Company D =
State A =
State B =
State C =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Business A =

Business B =

Representative =

Dear :

This is in response to a letter dated January 31, 2017, in which you request, through your authorized representatives, an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations (the "P&A 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").

The following facts and representations have been submitted under penalties of perjury in support of Company A's ruling request.

Company A is a State A corporation involved in Business A. Its principal offices are in State B. It from Company B on Date 1. Since , Company A has been looking to expand its presence through the acquisition of other companies. As part of its acquisition strategy, Company A's controlled group acquired Company C on Date 2. Company C is engaged in Business B, which compliments Business A. Company C's primary offices are in State C.

Company A and Company C are separate corporate entities that have been represented to maintain separate lines of business. Company A has maintained a qualified profit-sharing plan under sections 401(a) and 401(k) of the Code ("401(k) Plan"). Company C has maintained a separate 401(k) plan since (and prior to) joining the Company A controlled group on Date 2.

On Date 3, Company A acquired Company D. Company D has a highly-specialized employee benefits department, which includes Representative. On Date 4, Representative was reviewing Company A and Company C's benefits plans. During her review, Representative found an operational failure with regard to Company C's matching contributions in its 401(k) plan. As part of a further review, Representative found that Company C had failed to file the Form 5310-A.

Company A requests a ruling that the Service grant an extension of time pursuant to section 301.9100-1 of the P&A Regulations to file an election described in Section 3 of Rev. Proc. 93-40 and file a Form 5310-A for the Plan year.

In general, section 414(r) of the Code provides that for purposes of sections 129(d)(8) and 410(b) an employer shall be treated as operating separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. If the employer is treated as operating QSLOBs for the year, the employer may apply the minimum coverage requirements of section 410(b) (including the nondiscrimination requirements of section 401(a)(4) and the minimum participation requirements of section 401(a)(26)) separately with respect to the employees in each qualified separate business line.

Section 414(r)(2)(B) of the Code requires that an employer notify the Secretary of the Treasury that a line of business is being treated as separate for purposes of sections 129(d)(8) and 410(b).

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B) of the Code. Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 of Rev. Proc. 93-40 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 plan of the employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, 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.

Section 301.9100-1(a) of the P&A Regulations states that the regulations under sections 301.9100-1, 301.9100-2 and 301.9100-3 provide the standards the Internal Revenue Service ("IRS") will use to determine whether to grant an extension of time to make a regulatory election. It further provides that the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) of the P&A Regulations defines a "regulatory election" to mean an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer elects to be treated as operating qualified separate lines of business pursuant to section 414(r) of the Code and Section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

Section 301.9100-1(c) of the P&A Regulations provides that the IRS, in its discretion, may grant a reasonable extension of time under the rules of sections 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-2 of the P&A Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3(a) of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient 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 P&A Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if (i) the taxpayer's request for relief under this section is filed before the failure to make a timely election is discovered by the IRS; (ii) the taxpayer inadvertently failed to make the election because of intervening

events beyond the taxpayer's control; (iii) the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the IRS; or (v) the taxpayer 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)(1)(ii) of the P&A Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the IRS 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.

Company A's ruling request contains an explanation describing the circumstances that caused its failure to give the IRS timely notice of its QSLOB election for the testing year. Company A represents that its Form 5500 filings since its acquisition of Company C are consistent with an intent to rely on the QSLOB rules. Company A was initially unaware of its requirement to file Form 5310-A even after exercising reasonable diligence, but when Company A discovered that the requisite Form 5310-A had not been timely filed, it reached out to the IRS on a voluntary disclosure basis and also promptly filed this request for relief under section 301.9100-3 of the P&A Regulations. Company A requested this relief prior to the IRS discovering the failure to file the Form 5310-A. Thus, Company A satisfies clauses (i) and (iii) of section 301.9100-3(b)(1). In addition, because the statute of limitations for Company A's tax year remains open and Company A will not have a lower tax liability than it would have if it would have filed a timely election, the interests of the government would not be prejudiced by providing relief.

Accordingly, Company A is granted an extension of 60 days from the date of the issuance of this ruling letter to file notification of the QSLOB election on Form 5310-A with the appropriate office of the IRS.

No opinion is expressed as to whether the separate lines of business of the taxpayer satisfy the requirements under section 414(r) of the Code.

This ruling does not constitute a determination that a separate line of business satisfies the requirement of administrative scrutiny within the meaning of section 1.414(r)-6 of the federal Income Tax Regulations.

No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations, which may be applicable thereto. This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to one of your authorized representatives in accordance with a power of attorney on file with this office.

Sincerely,

/s/

Lauson C. Green
Branch Chief, Qualified Plans Branch 2
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)
(Employee Benefits)

cc: