Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:5
PLR-111644-17

Date:
September 18, 2017

Legend

Taxpayer =

Parent =

New Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

LLC 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Company Official =

Tax Professional =

Dear :

This letter is in response to your authorized representative's letter dated March 23, 2017, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Parent to file an election under § 1.1502-13(l)(3) of the Income Tax Regulations (the “Election”). The material information submitted in your letter and subsequent correspondence is summarized below.

As of Date 1, Parent was the common parent of an affiliated group of corporations that filed consolidated federal income tax returns (the "Parent Group"). Parent wholly owned Sub 1. Sub 1 wholly owned Sub 2. Sub 2 wholly owned each of Sub 3 and Sub 4. Sub 3 wholly owned Sub 5. Sub 4 wholly owned each of Sub 6 and Sub 7.

Prior to July 12, 1995, members of the Parent Group entered into the following transactions, certain of which gave rise to deferred gain:

1. On Date 1, Sub 4 formed Sub 8. On Date 2, Sub 4 distributed all of the issued and outstanding stock of each of Sub 6 and Sub 7 to Sub 2 (respectively, the “Sub 6 Distribution” and the “Sub 7 Distribution”). The Sub 6 Distribution and the Sub 7 Distribution were treated as intercompany distributions to which §§ 301 and 311 applied, and on which Sub 4 recognized gain under § 311(b), all of which was deferred under the regulations effective at that time.

2. Also on Date 2, Sub 2 formed Sub 9 and Sub 2 contributed all of the issued and outstanding stock of Sub 3, Sub 6, and Sub 7 to Sub 9.

3. On Date 3, Sub 9 distributed all of the issued and outstanding stock of Sub 3 to Sub 2 (the “Sub 3 Distribution”) and Sub 2 contributed the stock of Sub 9 to Sub 3. The Sub 3 Distribution was treated as an intercompany distribution to

which §§ 301 and 311 applied, and on which Sub 9 recognized gain under § 311(b), which was deferred under the regulations effective at that time.

4. On Date 4, Sub 4 distributed Sub 8 to Sub 2, (the "First Sub 8 Distribution"), which in turn distributed Sub 8 to Sub 1 (the "Second Sub 8 Distribution"). The First Sub 8 Distribution and the Second Sub 8 Distribution were treated as intercompany distributions to which §§ 301 and 311 applied, and on which Sub 4 and Sub 2, respectively, recognized any gain under § 311(b), all of which was deferred under the regulations effective at that time.

Subsequent to these transactions, the following transactions occurred:

5. On Date 5, Sub 9 merged into Sub 3 with Sub 3 surviving, a transaction that qualified for nonrecognition treatment under § 332.

6. On Date 6, Sub 3 merged into Sub 5 with Sub 5 surviving, a transaction that qualified as a reorganization described in § 368(a)(1)(A).

7. On Date 7, Sub 4 merged into Sub 2 with Sub 2 surviving, a transaction that qualified for nonrecognition treatment under § 332.

8. On Date 8, Sub 7 merged into Sub 5 with Sub 5 surviving, a transaction that qualified for nonrecognition treatment under § 332.

9. On Date 9, Sub 2 merged into Sub 1 with Sub 1 surviving, and Sub 1 merged into Parent with Parent surviving, each a transaction that qualified for nonrecognition treatment under § 332.

10. On Date 10, Parent contributed Sub 5 to Sub 10, a direct subsidiary of Parent, in an exchange qualifying for nonrecognition treatment under § 351.

11. On Date 11, Sub 10 merged into Sub 11, a direct subsidiary of Parent, with Sub 11 surviving, a transaction that qualified as a reorganization described in § 368(a)(1)(A).

12. On Date 12, (i) Sub 11 merged into Parent with Parent surviving, (ii) Parent formed Sub 12, to which it contributed Sub 5, and (iii) Sub 5 converted under state law from a corporation into a limited liability company (such converted entity, "LLC 1") disregarded as an entity separate from its owner for federal income tax purposes (such conversion, together with the contribution, the "Sub 5 Reorganization"), such contribution and conversion together a reorganization described in § 368(a)(1)(F).

13. After the Sub 5 Reorganization, LLC 1 contributed the stock of Sub 6 to LLC 2, a wholly owned subsidiary of LLC1 and an entity disregarded as separate from its owner for federal income tax purposes, and distributed the interests in LLC 2 to Sub 12 in a transaction that was disregarded for federal income tax purposes.

14. On Date 13, Parent was contributed to New Parent in a reverse acquisition described in § 1.1502-75(d)(3).

15. On Date 14, Taxpayer, the common parent of an affiliated group of corporations that filed consolidated federal income tax returns (the "Taxpayer Group"), acquired the Parent Group through a taxable merger of an indirect subsidiary of Taxpayer into New Parent with New Parent surviving.

Taxpayer has made the following representations:

a. Other than gain or loss recognized in the Sub 3 Distribution, the Sub 6 Distribution, the Sub 7 Distribution, the First Sub 8 Distribution, and the Second Sub 8 Distribution, no member of the Taxpayer Group or any consolidated group acquired by the Taxpayer Group had any deferred stock gain or loss from an intercompany transaction at any time during or prior to the taxable year that included July 12, 1995, that was not taken into account prior to July 12, 1995.

b. Neither the Parent Group nor the Taxpayer Group is seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time of its request (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

In July 1995, the Treasury Department and the Internal Revenue Service published new intercompany transaction regulations under § 1.1502-13 governing the treatment of transactions between members of a consolidated group. The regulations generally apply with respect to transactions occurring in taxable years beginning on or after July 12, 1995. See § 1.1502-13(l)(1).

Section 1.1502-13(l)(3) of the regulations permitted taxpayers to elect to apply the new regulations to stock elimination transactions (described in § 1.1502-13(l)(3)(ii)) to which prior law would otherwise apply. To make the election under § 1.1502-13(l)(3), taxpayers were required to include a statement making the Election with their timely filed original return (including extensions) for the taxable year including July 12, 1995.

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 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. See § 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. See § 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-13(l)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that 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 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, an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Parent to file the Election. The election must be attached to an amended return for the period including July 12, 1995.

The above extension of time is conditioned on the Taxpayer Group’s and the Parent Group's consolidated 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 filed (taking into account the time value of money). We express no opinion as to the tax liability for the years involved. A determination thereof will be made by the applicable Director's office 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 particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and 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 the above ruling.

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

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

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 this letter ruling.

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
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)