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-127354-19

Date:
May 13, 2020

Legend

Company A	=
Company B	=
Company C	=
State X	=
State Y	=
Plan A	=
Plan B	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=

Dear :

This is in response to a letter dated November 4, 2019, in which you request, through your authorized representative, an extension of time pursuant to § 301.9100-1 of the Procedure and Administration 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 your ruling request.

Company A is a State X limited liability company that elects to be treated as a corporation for federal income tax purposes. Company A uses an accrual method of accounting as its overall method of accounting and uses the calendar year as its annual accounting period. Company B is a State Y corporation. Company B uses an accrual method of accounting as its overall method of accounting and uses the calendar year as its annual accounting period. Company A and Company B are both wholly-owned subsidiaries of Company C and are members of a controlled group of corporations within the meaning of sections 414(b) and 1563(a). Company C is a State Y limited liability company that elects to be treated as a corporation for federal income tax purposes. Company C has an accrual method of accounting as its overall method of accounting and uses the calendar year as its annual accounting period.

Company A sponsors a defined contribution plan with a cash or deferred arrangement ("CODA") under section 401(k) (Plan A) that covers eligible employees of Company A and their beneficiaries. Company A has sponsored and maintained Plan A since Year 1. Company B sponsors a defined contribution plan with a CODA under section 401(k) (Plan B) that covers eligible employees of Company B and their employees. Company B has sponsored and maintained Plan B since Year 1.

Company C acquired Company A and Company B in Year 2. Prior to Year 2, Plan A and Plan B each met the required nondiscrimination and coverage testing requirements set forth in sections 401(a)(4) and 410(b). Following the expiration of the post-transaction transition period under section 410(b), Plan A and Plan B continued to be administered and operated as separate plans based on separate lines of business, and Company A and Company B each operated as separate lines of business under section 414(r) and the regulations thereunder.

In the course of a corporate acquisition, Company C underwent a detailed audit of its current benefit plans and discovered that, although Company A, Company B, and Company C have consistently worked with legal counsel, tax professionals, and consultants to ensure that they complied with the QSLOB rules, no Form 5310-A notice regarding QSLOB status for Plan A or Plan B had been filed. Company C immediately retained outside legal counsel and conducted a QSLOB analysis. Company C subsequently filed the appropriate Form 5310-A notice for Year 3.

Company C requests a ruling that the IRS grant an extension of time pursuant to § 301.9100-1 to file updated Forms 5310-A for Year 4, Year 5, Year 6, and Year 7 to reflect the treatment of Company A and Company B as separate lines of business for QSLOB purposes. Company C has requested this relief under § 301.9100-1 prior to the IRS discovery of any failure to file the election. Company C also represents that other than the filing of Form 5310-A, Plan A and Plan B satisfied all the requirements of section 414(r) and regulations thereunder, for Year 4, Year 5, Year 6, and Year 7.

In general, section 414(r) 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 QSLOB.

Section 414(r)(2)(B) 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). 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) states that the regulations under §§ 301.9100-1, 301.9100-2, and 301.9100-3 provide the standards the 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) 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 QSLOBs pursuant to section 414(r) and section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

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

Section 301.9100-2 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 § 301.9100-2. The relief requested in this case is not referenced in § 301.9100-2.

Section 301.9100-3(a) provides that applications for relief that fall within § 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in § 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) 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)(i) provides, in relevant part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) 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. The IRS may condition the grant of relief on the taxpayer providing the IRS with a statement from an independent auditor certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

Company C represents that its Form 5500 filings are consistent with reliance on two historical QSLOBs for purposes of nondiscrimination testing during Year 4, Year 5, Year 6, and Year 7. In addition, as set forth earlier, Company C requested this relief prior to the IRS discovering the failure to file accurate Forms 5310-A. Thus, clause (i) of § 301.9100-3(b)(1) is satisfied. In addition, granting this relief would not result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Thus, pursuant to § 301.9100-3(c)(1), the interests of the Government would not be prejudiced by providing the requested relief.

Accordingly, Company C is granted an extension of 60 days from the date of the issuance of this ruling letter to file notification of the QSLOB elections on Forms 5310-A for Year 4, Year 5, Year 6, and Year 7 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).

The rulings contained in this letter do not constitute a determination that a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6 of the federal Income Tax Regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, section 11.05.

No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations that may be applicable thereto. This ruling 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 ruling has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely,

Neil Sandhu
Senior Technician Reviewer
Qualified Plans, Branch 1
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: