

Internal Revenue Service

Department of the Treasury

Number: **200130011**
Release Date: 7/27/2001
Index Number: 9100.00-00; 382.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B06-PLR-100360-01

Date:

April 24, 2001

LEGEND:

Parent =

First-tier Sub 1 =

First-tier Sub 2 =

First-tier Sub 3 =

First-tier Sub 4 =

First-tier Sub 5 =

First-tier Sub 6 =

First-tier Sub 7 =

First-tier Sub 8 =

First-tier Sub 9 =

First-tier Sub 10 =

Second-tier Sub 1 =

Second-tier Sub 2 =

Second-tier Sub 3 =
Second-tier Sub 4 =
Second-tier Sub 5 =
Second-tier Sub 6 =
Second-tier Sub 7 =
Second-tier Sub 8 =
Second-tier Sub 9 =
Date 1 =
Date 2 =
Date 3 =
Company Official =

This responds to a letter submitted on behalf of Parent, dated December 18, 2000, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and First-tier Subs 1 through 10 (hereinafter "First-tier Subs 1-10") to make an election to restore value under § 1.382-8(h) (hereinafter referred to as "the Election"), effective for Parent's taxable year ending on Date 2. We received additional information in a letter, dated February 20, 2001. The material information submitted for consideration is summarized below.

Parent and First-tier Subs 1 - 10 are calendar year corporations. First-tier Sub 1 is the common parent of a consolidated group which includes Second-tier Sub 1. First-tier Sub 2 is the common parent of a consolidated group which includes Second-tier Subs 2 and 3. First-tier Sub 3 is the common parent of a consolidated group which includes Second-tier Subs 4 through 9. On Date 1, Parent underwent an ownership change as defined in § 382(g) of the Code.

Parent and First-tier Subs 1 - 10 intended to file the Election. The Election was due on Date 3, but for various reasons the Election was not filed. After the due date for the Election, it was discovered that the Election was not timely filed. The statute of limitations on assessment under § 6501(a) has not expired for Parent's or First-tier Subs' taxable year for which they want to make the Election or for any taxable year that would be affected by the Election.

Section 382(a) provides that the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the § 382 limitation for such year. Under § 382(b)(1), the § 382 limitation is determined by multiplying the value of the old loss corporation by the applicable long-term tax-exempt rate. A special rule designed to prevent “double counting” by controlled groups is set forth in § 1.382-8. Section 1.382-8(c)(1) requires the value of the stock of each member of the controlled group be reduced by the value of stock owned by that component member in any other component member. After the value of the stock of each component member is reduced under § 1.382-8(c)(1), component members of a controlled group can elect (the “Election”) under § 1.382-8(c)(2) to restore some or all of its value to another component member. The election to restore value is made following the procedures set forth in § 1.382-8(h). Since Parent and First- and Second-tier Subs constitute a controlled group under § 1.382-8, they request an extension of time under §§ 301.9100-1 through 301.9100-3 to file an election to restore value under § 1.382-8(h).

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 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.*, § 1.382-8(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and First-tier Subs 1-10 to file the Election, provided Parent and First-tier Subs 1-10 show 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.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that Company Official, who is a tax professional, was responsible for the Election and that Parent and First-tier Subs 1-10 relied on him to timely make the Election, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and First-tier Subs 1-10 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 § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent and First-tier Subs 1-10 to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its controlled group's) 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 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 by the Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether an ownership change occurred; whether Parent, First-tier Subs 1-10 and Second-tier Subs 1-9 are members of a controlled group; the amount of value, if any, that may be restored; or as to values or amounts of NOLs. In addition, we express no opinion as to the tax effects or consequences of filing the return or 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 return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1 we relied on certain statements and representations made by Parent, Parent's authorized representative, and Company Official. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and to the second-listed authorized representative.

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. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,
Associate Chief Counsel (Corporate)
By: Ken Cohen
Senior Technician Reviewer, Branch 3