

Internal Revenue Service

Department of the Treasury

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Date:
October 9, 2001

LEGEND

Purchaser =

A =

Trust A =

Target 1 =

Target 2 = EIN:

Target 3/Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Country G =

Country H =

State J =

State K =

m% =

n% =

o% =

p% =

q% =

r% =

Month E =

Year F =

Date A =

Date B =

Date C =

Company Official =

This letter responds to a letter dated May 7, 2001, submitted by Target 1 and Target 2 (on behalf of itself and as common parent of a consolidated group). Target 1 and Target 2 are requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Target 1 to file an election under § 1.382-8(h) (the "Election"). As a result of the Election, the Target 2 group will restore value under § 1.382-8(c)(2) to Target 1. This value had been reduced under § 1.382-8(c)(1) as a result of the ownership change of Target 1 that occurred on Date A. Additional information was received in letters dated July 9 and October 9, 2001. The material information is summarized below.

Prior to the acquisition described below, individual A and Trust A owned 100% of the stock of Target 1. Target 1 owned q% (less than 80%) of the stock of Target 2. Trust A owned the remaining n% of the stock of Target 2. Target 2 owned r% (at least 80%) of the stock of Target 3/Sub 1. An unrelated individual owned the remaining m%. Target 3/Sub 1 owned all of the stock of Sub 2, p% of the stock of Sub 3 (a Country G corporation) and o% of the stock of Sub 4 (a Country H corporation). The remaining stock of Sub 3 and Sub 4 was and continues to be owned by unrelated parties. Target 2 was the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. The other members of the Target 2 group were Target 3/Sub 1 and Sub 2.

Purchaser was formed in Month E of Year F for the purpose of acquiring Target 1, Target 2 and Target 3. On Date A, Purchaser acquired all of the Target 1 stock from

individual A and Trust A, n% of the Target 2 stock from Trust A and m% of the stock of Target 3/Sub 1 from the unrelated owner of such stock. As of Date A, only Target 1 was a loss corporation within the meaning of § 382(k)(1). Target 2, Target 3/Sub 1, Sub 2, Sub 3 and Sub 4 were not loss corporations. Thus, on Date A, Target 1 underwent an ownership change as defined in § 382(g).

On Date B, Target 2 distributed to Target 1 all (i.e., r%) of its stock of Target 3/Sub1, and Target 1 distributed to Purchaser the Target 3/Sub 1 stock it received from Target 2. On Date C, Target 1, Target 2, Target 3/Sub 1 and Sub 2 reincorporated from State J to State K. In addition, Target 1 and Target 2 changed their names.

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. Target 1 and the Target 2 consolidated group¹ are component members of a controlled group under § 1.382-8(e). Section 1.382-8(c)(1) requires the value of the stock of each member of a 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 of a controlled group is reduced under § 1.382-8(c)(1), that member can elect 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).

Target 1 intended to file the Election. The Election was required to be filed with the income tax return for Target 1 for the tax year that included Date A, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-1, for an extension of time to file the Election.

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

¹ Pursuant to § 1.382-8(f), the Target 2 consolidated group is treated as one taxpayer.

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 Target 1 to file the Election, provided it shows 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 Purchaser, Target 1, Target 2 and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Target 1 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 § 301.9100-1, until 45 days from the date on this letter, for Target 1 to file the Election with respect to the acquisition of the stock of Target 1 and the Target 2 group, as described above.

The above extension of time is conditioned on (1) the filing, within 120 days of the date on this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election, and (2) the taxpayers' (Purchaser's consolidated group's, Target 1's separate and Target 2's consolidated 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 applicable 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether an ownership change occurred; whether Target 1 and the Target 2 group are members of a controlled group; the amount of value, if any, that may be restored; or as to values or amounts of the net operating losses of Target 1. 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 Purchaser, Target 1, the Target 2 group 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.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)