

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200817010**
Release Date: 4/25/2008
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-131626-07

Date:
January 03, 2008

In re:

TY:

Legend:

Taxpayer 1 =
Taxpayer 2 =
Date 1 =
Year 1 =
Year 2 =

Dear :

This letter responds to a letter ruling request dated July 10, 2007, submitted on behalf of Taxpayer 1 and Taxpayer 2 (collectively referred to as Taxpayers). Taxpayers request an extension of time under Treas. Reg. § 310.9100-3 to complete the documentation of success-based fees required under Treas. Reg. § 1.263(a)-5(f), thereby excluding the fees from the definition of amounts paid to facilitate a transaction under Treas. Reg. § 1.263(a)-5(b) that are required to be capitalized under § 263(a).

Taxpayer 1 is the common parent of a consolidated group (Group 1). Group 1 uses a calendar taxable year, with a federal tax return due date of March 15 or an extended due date of September 15. Prior to the acquisition described below, Taxpayer 2 was the common parent of an affiliated group (Group 2). Group 2 had a taxable year ending

on September 30, with a federal tax return due date of December 15 or an extended due date of June 15.

Taxpayer 1 acquired Taxpayer 2 in a taxable stock purchase on Date 1. As a result, Group 2 ceased to exist, and its final taxable year ended, on Date 1. Group 2's final short taxable year was October 1, Year 1, through Date 1.

Taxpayers made preparations to file an extension for Group 1's federal income tax return for Year 1. Although the necessary form for the extension had been completed, due to unforeseen circumstances Taxpayers failed to timely file the form on March 15, Year 2. Consequently, the Year 1 federal income tax returns for both Group 1 and Group 2 were due on March 15, Year 2, rather than September 15, Year 2.

Taxpayers incurred success-based fees in connection with the taxable stock purchase on Date 1. Shortly after the acquisition, Taxpayer 1 engaged an outside accounting firm to identify and compile documentation for the success-based fees paid by Taxpayers. The outside firm was given a due date of September 1, Year 2, for the completion of the documentation, in anticipation of a September 15 due date for the returns, the date that would have been the due date had the extension been properly filed. Thus, the success-based fees were not identified and documented prior to March 15, Year 2, the actual due date of the returns.

As a general rule, § 263(a) and Treas. Reg. § 1.263(a)-5(a) require capitalization of amounts paid to facilitate certain acquisition transactions. The amounts required to be capitalized generally include amounts paid in the process of investigating or otherwise pursuing the transaction. Treas. Reg. § 1.263(a)-5(b)(1). However, there is an exception to this requirement for certain "success-based fees." Treas. Reg. § 1.263(a)-5(f). This exception provides:

An amount paid that is contingent on the successful closing of a transaction described in paragraph (a) of this section is an amount paid to facilitate the transaction except to the extent the taxpayer maintains sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction. This documentation must be completed on or before the due date of the taxpayer's timely filed original federal income tax return (including extensions) for the taxable year during which the transaction closes. Id.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 set forth the standards the Commissioner uses in determining whether to grant an extension of time to make an election.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax and a request to adopt, change, or retain an accounting method or accounting period, but does not include an application for an extension of time for filing

a return under § 6081. A regulatory election means an election whose due date is prescribed by, *inter alia*, a regulation published in the Federal Register.

Treas. Reg. § 301.9100-1(c) generally provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time to make a regulatory election under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3.

Treas. Reg. § 301.9100-2 provides automatic extensions of time in certain circumstances not applicable in this case.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections 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 the grant of relief will not prejudice the interests of the government.

In the present situation, the documentation required by Treas. Reg. § 1.263(a)-5(f) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayers a reasonable extension of time, provided that Taxpayers satisfy the requirements set forth in Treas. Reg. § 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayers satisfy the requirements of Treas. Reg. § 301.9100-3(a). We further conclude that Taxpayers' request for an extension of time to complete the documentation until the date that would have been the due date of the returns, if the form had been timely filed, is a reasonable extension of time under Treas. Reg. § 301.9100-3(c).

The granting of an extension of time is not a determination that Taxpayers are otherwise eligible to make the election. Treas. Reg. § 301.9100-1(a). 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. Specifically, no opinion is expressed concerning the deductibility of the success-based fees, including whether Taxpayers' documentation is adequate for purposes of Treas. Reg. § 1.263(a)-5(f).

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. 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 the letter ruling.

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

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Thomas D. Moffitt
Branch Chief, Branch 2
(Income Tax & Accounting)

cc: