

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200945007**  
Release Date: 11/6/2009

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 9100.00-00

, ID No.  
Telephone Number:

Attn:

Refer Reply To:  
CC:ITA:B01  
PLR-105895-09  
Date:  
September 10, 2009

EIN:

TY:

Legend:

Taxpayer =

Corporation =

Firm A =

Firm B =

Firm C =

Date =

Year =

\$y =

\$z =

Dear \_\_\_\_\_ :

This letter responds to a letter ruling request dated February 11, 2009, submitted by Taxpayer. Taxpayer requests an extension of time under § 310.9100-3 of the Income Tax Regulations to complete the documentation of success-based fees required under § 1.263(a)-5(f), thereby excluding the fees from the definition of amounts paid to facilitate a transaction under § 1.263(a)-5(b).

Taxpayer was acquired by Corporation in a taxable stock acquisition on Date. The transaction resulted in Taxpayer becoming a member of a consolidated group in which

Corporation is the common parent. This further resulted in Taxpayer having a short taxable year ending on Date.

In connection with Taxpayer's acquisition by Corporation, Taxpayer paid success based fees to Firm A and Firm B. Upon consummation of the transaction between Taxpayer and Corporation, Firm A was paid \$y, and Firm B was paid \$z.

Shortly after the transaction was completed, the CFO of Taxpayer directed the Controller of Taxpayer to prepare a request for extension of time to file its federal return for the short taxable year. The CFO did not supervise the Controller's preparation of the extension request. Controller left Taxpayer's organization in June of Year, and it was discovered by Firm C in October of Year that an extension was not filed by Controller before his departure. As a result, Taxpayer did not make the election under § 1.263(a)-5(f) by the due date of its federal tax return for the Year short taxable year.

As a general rule, § 263(a) of the Internal Revenue Code and § 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. Section 1.263(a)-5(b)(1). However, there is an exception to this requirement for certain "success-based fees." Section 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.

Sections 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.

Section 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.

Section 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 §§ 301.9100-2 and 301.9100-3.

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

Section 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 § 1.263(a)-5(f) is a regulatory election as defined in § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer a reasonable extension of time, provided that Taxpayer satisfies the requirements set forth in § 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayer satisfies the requirements of § 301.9100-3(a). We further conclude that Taxpayer's request for an extension of time to complete the documentation is a reasonable extension of time under § 301.9100-1(c).

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election. Section 301.9100-3(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 correct due date of Taxpayer's return or the deductibility of the success-based fees, including whether Taxpayer's documentation is adequate for purposes of § 1.263(a)-5(f).

The ruling contained in this letter is 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 ruling, 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 yours,

JOHN P. MORIARTY  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Income Tax and Accounting)