

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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PLR-120538-10
Date:
November 03, 2010

Legend

Taxpayer =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Company Official =

Tax Professionals =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representatives, dated May 13, 2010, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.382-6(b) of the Income Tax Regulations (the "Election") to make a closing-of-the-books election with respect to an ownership change, within the meaning of § 382 of the Internal Revenue Code.

Summary of Facts

Taxpayer was incorporated in Year 1 and has accumulated net operating losses since its incorporation. On Date 1, Taxpayer experienced an ownership change as defined in § 382(g) and, consequently, § 382(a) limited its ability to offset post-change taxable income by pre-change losses. Taxpayer experienced a second ownership change on Date 2 (the "second ownership change").

An election under § 1.382-6(b) to close its books with respect to the second ownership change was due by the due date of Taxpayer's tax return for the Year 2 taxable year, but for various reasons, Taxpayer did not make the Election. Subsequent to Taxpayer filing its return for the Year 2 taxable year, Taxpayer submitted this request, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the election should have been filed or any subsequent taxable year.

Section 1.382-6(b)(1) allows a loss corporation to elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

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., § 1.382-6(b)(2)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to

grant an extension of time for Taxpayer to file the Election, provided that Taxpayer 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 Taxpayer, Tax Professionals, and Company Official explain the circumstances that resulted in the failure to file timely a valid Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including representations made, we conclude that Taxpayer 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, we grant an extension of time under § 301.9100-3, until forty-five days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's tax liability being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, 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 amount of 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 amount of tax liability is lower. See § 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.382-6(b)(2). Taxpayer's return must be amended to attach the election statement required by § 1.382-6(b)(2). A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching to the return a statement that provides the date and control number (PLR-120538-10) of this ruling letter.

Caveats

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.

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.

In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Taxpayer, Tax Professionals, and Company Official. The appropriate Service office, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

Procedural Statements

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

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

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.

Sincerely,

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