Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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PLR-111419-13

Date:
May 31, 2013

LEGEND

Taxpayer =

Taxable Year =

Corporation =

LLC =

Firm =

Advisor =

Date 1 =

$a =

Dear :

This letter responds to a letter ruling request dated March 8, 2013, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and -3 of the Procedure and Administration Regulations to make the election described in section 4 of Rev. Proc. 2011-29, 2011-18 I.R.B. 746, which includes attaching a statement to Taxpayer's original federal income tax return for the Taxable Year.

On Date 1, Taxpayer was acquired by Corporation in a taxable stock acquisition described in § 1.263(a)-5(e)(3)(ii) of the Income Tax Regulations (the acquisition). Due to the acquisition, Taxpayer's consolidated group terminated, and its taxable year ended on Date 1. At the time of the acquisition, Corporation was controlled by LLC.

Pursuant to an engagement agreement between Taxpayer and Firm, Taxpayer would owe Firm a success-based fee based on the value of the acquisition and due only when and if the acquisition closed successfully. Taxpayer paid Firm $a upon the successful closing of the acquisition.

On Taxpayer's original federal income tax return prepared by Advisor for the Taxable Year, Taxpayer capitalized under § 263(a) of the Internal Revenue Code 30 percent of $a, and deducted the remaining 70 percent, consistent with Taxpayer's intent to make the safe harbor election provided in Rev. Proc. 2011-29. However, in reliance on Advisor, Taxpayer failed to attach the mandatory statement identifying the transaction and setting forth this allocation as required by section 4.01(3) of Rev. Proc. 2011-29.

Taxpayer requests that an extension of time be granted solely for the purpose of allowing taxpayer to attach to its return for the Taxable Year the mandatory statement.

Section 263(a) provides generally that no deduction is allowed for any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate or any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made. Section 1.263(a)-1T(c)(3) provides that no deduction is allowed for an amount paid to acquire or create an intangible, which under § 1.263(a)-4(c)(1)(i) and (d)(2)(i)(A) includes an ownership interest in a corporation or other entity. See also § 1.263(a)-4(a).

In the case of an acquisition or reorganization of a business entity, costs that are incurred in the process of acquisition and that produce significant long-term benefits must be capitalized. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 89-90 (1992); Woodward v. Commissioner, 397 U.S. 572, 575-576 (1970).

Under § 1.263(a)-5, a taxpayer must capitalize an amount paid to facilitate the business acquisition or reorganization transactions described in § 1.263(a)-5(a). In general, an amount is paid to facilitate a transaction described in § 1.263(a)-5(a) if the amount is paid in the process of investigating or otherwise pursuing the transaction. Whether an amount is paid in the process of investigating or otherwise pursuing the transaction is determined based on all of the facts and circumstances. See § 1.263(a)-5(b)(1).

Section 1.263(a)-5(f) provides that an amount that is contingent on the successful closing of a transaction described in § 1.263(a)-5(a) (i.e., a success-based fee) is presumed to facilitate the transaction. A taxpayer may rebut the presumption by

maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction.

Section 4.01 of Rev. Proc. 2011-29 provides a safe harbor election for taxpayers that pay or incur success-based fees for services performed in the process of investigating or otherwise pursuing a covered transaction described in § 1.263(a)-5(e)(3). In lieu of maintaining the documentation required by § 1.263(a)-5(f), a taxpayer may elect to allocate a success-based fee between activities that facilitate the transaction and activities that do not facilitate the transaction by treating 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction and by capitalizing the remaining 30 percent as an amount that does facilitate the transaction. In addition, the taxpayer must attach a statement to its original federal income tax return for the taxable year the success-based fee is paid or incurred, stating that the taxpayer is electing the safe harbor, indentifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

Taxpayer is requesting permission with this ruling request to attach the statement required by section 4.01(3) of Rev. Proc. 2011-29 to its return, by amending its original filed return and superseding it with a return with the proper election statement completed and attached.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 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 that granting relief will not prejudice the interests of the government. See also § 301.9100-3(b) and (c).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests

of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 45 days from the date of this ruling to file the statement required by section 4.01(3) of Rev. Proc. 2011-29, stating that it is electing the safe harbor for success-based fees, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

The rulings contained in this letter are based upon information and representations submitted by 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, including whether Taxpayer properly included the correct costs as its success-based fees subject to the election, or whether Taxpayer's transaction was within the scope of Rev. Proc. 2011-29.

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.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax years affected. Alternatively, taxpayers filing returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling.

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

Sincerely,

Nancy J. Lee
Assistant to the Branch Chief, Branch 1
(Income Tax & Accounting)

cc: