



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUL 23 2013

201342018

Uniform Issue List: 9100.00-00

T:EP:RA:T1

Legend:

Company A =
Company B =
Plan X =
Plan Y =
Accounting Firm Z =

Dear:

This letter is in response to a letter dated April 20, 2012 submitted on your behalf by your authorized representative, in which you request a ruling granting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations (the "P&A Regulations") to file the notice of election described in Section 3 of Revenue Procedure 93-40, 1993-2 C.B. 535 ("Rev Proc. 93-40") to be treated as operating qualified separate lines of business ("QSLOBS") under section 414(r)(2) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Company A is a 501(c)(8) nonprofit corporation established to act as a governing body for a system of fraternal and charitable organizations. Company B is a full-service direct marketing, mailing and fulfillment organization. Company B is a wholly-owned subsidiary of Company A. You represent that Company A and

Company B are separate lines of business. Both Companies have at least 50 employees throughout the plan year.

Company A maintains Plan X with a plan year ending on April 30th. Company B maintains Plan Y with a calendar year plan year. Both plans are tax qualified retirement plans with a Code section 401(k) arrangement. You represent that other than Company A's failure to timely file the QSLOB election notification, Company A and Company B satisfy the requirements under section 414(r) of the Code.

Company A acquired Company B on July 31, 20 . Shortly after Company B was acquired Accounting Firm Z advised Company A of the controlled group and QSLOB rules. The ruling request submission includes an affidavit from Accounting Firm Z containing a statement that Company A was advised of the need to file a Form 5310-A Notice of QSLOB on or before February 15, 20 . Further, Company A relied on Accounting Firm Z to remind it of the filing deadline and to prepare Form 5310-A. However, due to miscommunication, Accounting Firm Z did not remind Company A of the need to file and Form 5310-A was not timely filed. Accounting Firm Z did not provide Company A with the completed Form 5310-A before the deadline for filing the notice had passed. The failure to file the QSLOB election was discovered at the end of the 20 calendar year during an audit of Plan X for the period ending April 30, 20 .

Forms 5500 for Plan X and Plan Y have been timely filed. Company A and Company B have operated as if the QSLOB election had been made and filed their Forms 5500 and tested their plans in a manner consistent with the fact that they were QSLOBs.

Based on the above facts and representations, you request a ruling that under section 301.9100-3 of the P&A Regulations the filing of Form 5310-A will be deemed as a timely filing for purposes of operating qualified separate lines of business under section 414(r) of the Code with respect to Plan X's May 1, 20 through April 30, 20 plan year and subsequent plan years. Company A also requests that it be granted an extension of 6 months from the date of the issuance of a letter ruling to file notification of the QSLOB election.

Code section 414(r) provides rules for determining whether an employer operates a QSLOB for purposes of applying sections 129(d)(8), 401(a)(26), and 410(b) (including section 401(a)(4)).

Under Code section 414(r)(2), the line of business must have at least 50 employees, the employer must notify the Secretary that such line of business is being treated as separate, and the line of business must satisfy the guidelines prescribed by the Secretary or the employer must receive a determination from the Secretary that the line of business is separate ("administrative scrutiny requirement").

Section 1.414(r)-4(c) of the Income Tax Regulations provides that the notice requirement under Code section 414(r)(2)(B) must take the form and be filed at the time prescribed by the Commissioner in revenue procedures or other guidance of general applicability.

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of Code section 414(r)(2)(B). Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the employer's plan that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, the notice cannot be modified, withdrawn, or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

Sections 301.9100-1(a) and 301.9100-1(c) of the P&A Regulations generally provide that the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory or statutory election pursuant to the standards set forth in sections 301.9100-2 and 301.9100-3. Such extension of time is only available for elections that a taxpayer is otherwise eligible to make.

Section 301.9100-1(b) of the P&A Regulations defines the term "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.

Section 301.9100-3(a) of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

Section 301.9100-3(b)(1) of the P&A Regulations provides that, except as otherwise provided in paragraphs (b)(3)(i) through (iii), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

- (i) Requests relief under this section before the failure to make the regulatory election is discovered by the Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Service; or

- (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c) of the P&A Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability.

Section 301.9100-3(e)(4) of the P&A Regulations provides that the taxpayer must state whether the taxpayer's return for the taxable year in which the election should have been made or any taxable years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court.

Based on the facts, representations and the affidavit submitted, Company A requested relief before the failure to make the election was discovered by the Service, and Company A reasonably relied on a qualified tax professional employed by Company A, and the tax professional failed to make, or advise the taxpayer to make, the election. Upon discovering the failure to file the QSLOB election at the end of the 2011 calendar year, Company A promptly filed this request for relief under section 301.9100-3 of the P&A Regulations to allow them to retroactively request a QSLOB election. Thus, based on the information and representations submitted, Company A satisfies clauses (i) and (v) of section 301.9100-3(b)(1) of the P&A Regulations.

Further, Company A and Company B have operated as if the election had been made and filed their Forms 5500 and tested their plans in a manner consistent with the fact that they were QSLOBs. The tax years are not closed under the statute of limitations. Thus, granting relief will not prejudice the interests of the Government.

Because Company A has acted reasonably and in good faith and the granting of relief will not prejudice the interests of the Government, we grant Company A a period of 60 days from the date of this letter ruling to file the Form 5310-A for Plan A's May 1, 20 through April 30, 20 plan year, and such filing will be deemed a timely filing under Section 3 of Rev. Proc. 93-40 with respect to such year.

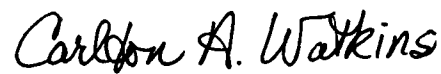
This ruling does not address whether Company A and Company B otherwise satisfy the requirements to be treated as QSLOBs for the 20 -20 plan year and subsequent years.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact ***** (I.D. *****), SE:T:EP:RA:T1, at (***)
_*.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter Ruling
Notice of Intention to Disclose, Notice 437

CC: