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

SEP 13 2013

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIL No.: 9100.00-00

Attn.:

T. EP. RAITI

Legend:

Company A =

Company B =

Attorney C =

Dear :

This is in response to a letter dated December 11, 2012, in which you request, through your authorized representative, an extension of time pursuant to section 301.9100-1 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 penalties of perjury in support of Company A's ruling request.

Company A is the parent company of Company B. Company A and Company B are separate corporate entities that maintain separate lines of business. Since January 1, 1990, Company A has maintained a qualified plan under sections 401(a) and 401(k) of the Code ("401(k) Plan"). Prior to 2010, Company B did not offer its employees a qualified retirement plan. In 2009, Company A and Company B consulted with an experienced employee benefits attorney, Attorney C, regarding establishing a retirement plan for Company B's employees. Attorney C recommended that Company B establish its own 401(k) Plan and elect to be treated as a QSLOB under section 414(r). Company A, Company B, and Attorney C agreed that Attorney C would design and implement Company B's 401(k) Plan, including preparing the plan document, summary plan description, and QSLOB filing. Effective January 1, 2010, with Attorney C's assistance, Company B established the 401(k) Plan for its employees.

Since 2005, Company A and Company B had worked with Attorney C on a number of employee benefits matters, and they believed that Attorney C was handling the filing of the Form 5310-A. In September and October of 2011, Company A asked Attorney C for copies of Attorney C's work including the completed Form 5310-A. Attorney C assured Company A that he would personally deliver the requested documents the first week in November of 2011, but he failed to do so. After repeated unsuccessful attempts to obtain the documents, Company A became increasingly frustrated with Attorney C's non-responsiveness. On November 18, 2011, Company A interviewed new legal counsel who advised Company A that the deadline for filing the Form 5310-A for the 2010 testing year had passed. Company A continued its attempts to contact Attorney C for verification that the Form 5310-A had been filed. Finally, on December 12, 2011, Company A learned that Attorney C had failed to timely file the Form 5310-A when Attorney C provided Company A with the Form 5310-A in draft form. Company A immediately hired new legal counsel to handle the QSLOB matter. On December 11, 2012, Company A's new legal counsel requested relief from the Service under section 301.9100-1 of the P&A Regulations. Prior to this date, the Service was unaware of Company A's failure to make the election to be treated as a QSLOB.

Company A requests a ruling that the Service grant an extension of time pursuant to section 301.9100-1 of the P&A Regulations to file the notice of an election described in Section 3 of Rev. Proc. 93-40 to be treated as a QSLOB under section 414(r) of the Code for the 2010 Plan year.

In general, section 414(r) of the Code provides that for purposes of sections 129(d)(8) and 410(b) an employer shall be treated as operating separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. If the employer is treated as operating QSLOBs for the year, the employer may apply the minimum coverage requirements of section 410(b) (including the nondiscrimination requirements of section 401(a)(4) and the minimum participation requirements of section 401(a)(26)) separately with respect to the employees in each qualified separate business line.

Section 414(r)(2)(B) of the Code requires that an employer notify the Secretary of the Treasury that a line of business is being treated as separate for purposes of sections 129(d)(8) and 410(b).

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B) of the Code. Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 of Rev. Proc. 93-40 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 plan of the

employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, 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.

Section 301.9100-1(a) of the P&A Regulations states that the regulations under sections 301.9100-1, 301.9100-2 and 301.9100-3 provide the standards the Commissioner of Internal Revenue ("Commissioner") will use to determine whether to grant an extension of time to make a regulatory election. It further provides that the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) of the P&A Regulations defines a "regulatory election" to mean an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer elects to be treated as operating qualified separate lines of business pursuant to section 414(r) of the Code and Section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

Section 301.9100-1(c) of the P&A Regulations provides that the Commissioner, in the Commissioner's discretion, may grant a reasonable extension of time under the rules of sections 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-2 of the P&A Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

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 sufficient 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 a taxpayer will be deemed to have acted reasonably and in good faith if (i) the taxpayer's request for relief under this section is filed before the failure to make a timely election is discovered by the Service; (ii) the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer 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)(1)(ii) 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.

Company A's ruling request contains an explanation describing the circumstances that caused its failure to give the Service timely notice of its QSLOB election for the 2010 testing year. Since 2005, Attorney C had competently handled Company A's employee benefit matters, and, Company A, Company B, and Attorney C had agreed that Attorney C would timely file the Form 5310-A. Thus, Company A reasonably believed that Attorney C would handle the timely filing of the Form 5310-A. Company A also requested relief under section 301.9100-1 of the P&A Regulations prior to the Service discovering the failure to file the election. Thus, Company A satisfies clauses (i) and (v) of section 301.9100-3(b)(1). In addition, because the statute of limitations for Company A's 2010 tax year remains open, the interests of the government would not be prejudiced by providing relief.

Accordingly, Company A is granted an extension of 60 days from the date of the issuance of this ruling letter to file notification of the QSLOB election on Form 5310-A with the appropriate office of the Service.

No opinion is expressed as to whether the separate lines of business of the taxpayer satisfy the requirements under section 414(r) of the Code.

This ruling does not constitute a determination that a separate line of business satisfies the requirement of administrative scrutiny within the meaning of section 1.414(r)-6 of the federal Income Tax Regulations.

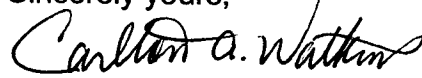
No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations, which may be applicable thereto.

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 has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Should you have any concerns regarding this ruling, please contact

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice 437

cc: