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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201501027

OCT 08 2014

Uniform Issue List: 9100.00-00

T:EP:RA:T1

Legend:

Company A =

Company B =

Plan C =

Firm D =

Dear :

This is in response to a letter dated May 19, 2014, in which you request, through your authorized representatives, 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 the ruling request.

Company A is the parent company in a controlled group of corporations that includes Company B. Company A and Company B are separate corporate entities that maintain separate lines of business. Company B established Plan C, a defined benefit pension plan, in 1999, when it acquired the assets of Company B's predecessor. Plan C covers only Company B's non-union employees. Company B maintains a separate retirement plan for its union employees. In addition, another controlled group member maintains a qualified 401(k) plan in which certain Company B employees may participate.

Effective October 31, 2006, Company B closed the entry of new participants in Plan C and froze both (1) the accrued benefits of participants with less than five years of service and (2) the accrued benefits of participants with five or more years of service

who elected to cease to accrue future benefits under Plan C. Those participants whose accrued benefits under Plan C were frozen as of October 31, 2006, became eligible to participate in the 401(k) plan maintained by another controlled group member. Also, in 2006, Plan C's assets were invested in annuity contracts issued by Firm D. Firm D also became Plan C's actuary, contract administrator and investment advisor.

Firm D was responsible for performing coverage and nondiscrimination testing for Plan C. Firm D provided Company B with a questionnaire to collect information about Plan C. Company B's accounting manager completed the questionnaire and provided answers specific to Company B and Plan C. The questionnaire reported that Company B was a member of a controlled group of corporations, but it provided information specific only to Company B, because information on the other members of the controlled group was not available to the accounting manager.

Firm D's questionnaire also included a census form on which Firm D indicated that benefits under Plan C were frozen, that no future accrual would occur, that Plan C satisfied the minimum coverage rules, and it did not need to be tested. This statement on the questionnaire was not entirely accurate, because the accrued benefits of all participants were not frozen as of October 31, 2006, due to the continued participation of those participants who had five or more years of service and who had elected to continue to accrue future benefits under Plan C. Nonetheless, Company B's accounting manager completed the census portion of the questionnaire by answering on behalf of Company B with information available to him. As such, he indicated that Company B itself did not have separate lines of business and that Company B itself had not filed Form 5310-A, Notice of Qualified Separate Lines of Business.

Company B represents that Firm D did not follow up regarding Company B's statement that Company B was part of a controlled group. Firm D also did not explain the consequences of a Qualified Separate Line of Business (QSLOB) election. For its part, Company B acknowledges that it did not question Firm D's statement regarding non-discrimination testing and the effect of Plan C's status as a "frozen" plan.

Thereafter, Company B submitted demographic information to Firm D based solely on the employees of Company B and not on any other employees in the controlled group. Company B asserts that when active participation under the Plan fell below 50 employees in 2008, Firm D indicated that Plan C satisfied coverage rules, because at least 40% of the employees of the employer were covered. Company B did not learn of the error until December 2013, in the course of the due diligence process for Company A's acquisition by another entity. Until the end of 2013, Company B was not aware that the way it was reporting demographic census data was insufficient to permit proper coverage testing unless a QSLOB election was in effect.

Company B provided an affidavit signed by its Chief Financial Officer. He describes the events that led to the failure to make the QSLOB election and how Company B reasonably relied on Firm D to advise it on matters such as the adequacy of its reporting demographic information and the need for a QSLOB election.

Company A and Company B request 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 2007 testing year and each subsequent year thereafter.

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.

According to the facts, representations, and affidavits submitted, until December 2013, Company B was unaware of the need for a QSLOB election. Company B engaged Firm D, in 2006, to perform services for Plan C, including coverage and non-discrimination testing, and Company B responded to Firm D's intake questionnaire based on information available to Company B. Firm D did not follow up on responses to the questionnaire that would reasonably have led to a determination that a QSLOB election was necessary with respect to Company B to remain in compliance with the requirements of section 401(a)(26) of the Code. Company B reasonably relied on Firm D, as its third party service provider, to advise Company B of the need to file Form 5310-A. In addition, Company A and Company B 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), (iii) and (v) of section 301.9100-3(b)(1).

In addition, the interests of the Government will not be prejudiced by granting the relief requested, because granting relief will not result in the taxpayer having a lower tax liability in the aggregate for the taxable years affected, including those years closed by the statute of limitations. Accordingly, because the taxpayer has acted reasonably and in good faith and the granting of relief will not prejudice the interests of the Government,

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 for the 2007 testing year and each subsequent year thereafter.

No opinion is expressed as to whether Company B otherwise satisfies the requirements under section 414(r) of the Code to be treated as a QSLOB for the 2007 testing year and subsequent years. 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.

If you have any questions, please contact (I.D. # ) by phone at or fax at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: