



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

201502020

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT 16 2014

SEIT: EP: RA: T1

UIL No.: 9100.00-00

Attn.:

Legend:

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Company G =

Company H =

Company I =

Company J =

Company K =

QSLOB 1 =

201502020

QSLOB 2 =

Attorney L =

Plan X =

Plan Y =

Dear :

This is in response to a letter dated May 13, 2014, as supplemented by information received on August 20, 2014, in which you request, through your authorized representative, extensions 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") for testing years beginning January 1, 2011, and January 1, 2012.

The following facts and representations have been submitted under penalties of perjury in support of Company A's ruling request. Affidavits supporting these facts and representations were also submitted.

In 2010, Company A formed part of a controlled group that operated two qualified separate lines of business, QSLOB 1 and QSLOB 2. QSLOB 2 included Company B, an affiliated company with no employees, Company C, Company D, Company E, and Company F. Companies C, D, E, and F of QSLOB 2 participated in Plan Y. QSLOB 1 consisted of Company A and Company G. The entities in QSLOB 1 participated in Plan X. In 2010, Company F was sold and Company K became a member of Company A's controlled group and a member of QSLOB 1. Attorney L gave timely notice of the initial QSLOB election by filing the Form 5310-A on behalf of Company A for the testing year beginning January 1, 2010 ("2010 Testing Year"). Attorney L also timely filed a modified election for the 2010 Testing Year.

In 2011, Company H, Company I, and Company J became part of Company A's controlled group, adopted Plan X, and became part of QSLOB 1. Although Company A informed Attorney L of these changes for purposes of modifying its prior QSLOB election, Attorney L failed to file the Form 5310-A reflecting the acquisitions of Companies H, I, and J, and the inclusion of these companies in QSLOB 1 on or before October 15, 2012, the Notification Date for the testing year beginning January 1, 2011 ("2011 Testing Year").

In 2012, Company B, Company C and Company D were reassigned from QSLOB 2 to QSLOB 1, and Company C and Company D became adopting employers of Plan X. After the reassignment, QSLOB 2 consisted of one member, Company E. Company A provided Attorney L with the information necessary to file the Form 5310-A for the testing year beginning January 1, 2012 ("2012 Testing Year"), and both Company A and Attorney L understood that the filing of the election was Attorney L's responsibility. However, Attorney L became engrossed in business and personal matters and failed to file the election on or before October 15, 2013, the Notification Date for the 2012 Testing Year.

Based on the above facts and representations, you request an extension of 60 days from the date of issuance of a favorable letter ruling in which to file (i) a Form 5310-A QSLOB Notification for the 2011 tax year, which was otherwise due no later than October 15, 2012, and (ii) a Form 5310-A QSLOB Notification for the 2012 tax year, which was otherwise due not later than October 15, 2013, pursuant to section 301.9100-3 of the P&A Regulations.

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 qualified separate lines of business 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. The testing year is the calendar 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, except as provided in paragraphs (b)(3)(i) through (iii) of this section, 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(b)(3) of the P&A Regulations provides that a taxpayer is deemed to have not acted reasonably or in good faith if (i) the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed at the time relief is requested; (ii) the taxpayer was informed in all

material respects of the required election and related tax consequences, but chose not to file the election; or (iii) the taxpayer requests relief based on hindsight.

Section 301.9100-3(c)(1) of the P&A Regulations provides the standards for determining whether the interests of the Government are prejudiced. Paragraph (c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Paragraph (c)(1)(ii) provides 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 elections for the 2011 and 2012 Testing Years. Regarding the 2011 Testing Year, Company A had exercised due diligence by providing Attorney L with the necessary information to make a timely QSLOB election. Attorney L, however, failed to file the Form 5310-A by October 15, 2012, the Notification Date for the 2011 Testing Year, to include Companies H, I, and J in QSLOB 1.

With respect to the 2012 Testing Year, Company A informed Attorney L that three entities in QSLOB 2, Company B, Company E, and Company F, were transferring to QSLOB 1, for the specific purpose of preparing the Form 5310-A for the 2012 Testing Year. However, Attorney L became engrossed in business and personal matters and failed to make a timely election by October 15, 2013, the Notification Date for the 2012 Testing Year.

This request for relief under section 301.9100-1 of the P&A Regulations was made on May 13, 2014, before the Service discovered the failures to file the elections for the 2011 and 2012 Testing Years. Based on these facts, Company A is deemed to have acted reasonably and in good faith because it satisfies clauses (i), (iii), and (v) of section 301.9100-3(b)(1), with respect to both testing years.

Accordingly, Company A is granted an extension of 60 days from the date of the issuance of this letter ruling in which to file (i) a Form 5310-A notice of a QSLOB election for the 2011 Testing Year, and (ii) a Form 5310-A notice of a QSLOB election for the 2012 Testing Year.

No opinion is expressed as to whether the separate lines of business of the taxpayer satisfy the requirements (other than notifying the Secretary) 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.

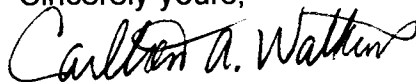
No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations, which may be applicable thereto.

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:

Deleted copy of letter ruling  
Notice 437

cc: