

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B04  
PLR-129003-14

Date:  
January 13, 2015

Corp A =

Entity =

Date 1 =

Date 2 =

Date 3 =

Company Official/  
Tax Professional =

Dear :

This letter responds to a letter dated July 30, 2014, submitted on behalf of Entity, as the successor to Corp A and substitute agent of the Corp A consolidated group, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.382-9(i) not to have the provisions of § 382(l)(5) apply to an ownership change that occurred in a title 11 or similar case (the "Election"). Additional information was received in a letter dated August 21, 2014. The material information submitted in the request and the later correspondence is summarized below.

Corp A was the common parent of the Corp A consolidated group. On Date 1, Corp A and certain of its subsidiaries filed petitions for relief under chapter 11 of the bankruptcy code. On Date 2, Entity was formed as a domestic limited liability

company. On Date 3, Entity elected to be treated as a corporation for Federal income tax purposes and it became the successor to Corp A and substitute agent of the Corp A consolidated group when Corp A went out of existence pursuant to the bankruptcy reorganization. As a result of the bankruptcy reorganization, an ownership change as defined by § 382(g) occurred on Date 3, and Entity became a new loss corporation and Corp A's pre-change losses were subject to limitation under § 382.

Section 382(l)(5) provides that if certain requirements are met, § 382(a) shall not apply to the ownership change. If § 382(l)(5) applies, certain limitations are placed on the corporation.

Section 382(l)(5)(H) provides that a new loss corporation may elect, subject to terms and conditions as the Secretary may prescribe, not to have the provisions of § 382(l)(5) apply. If a new loss corporation wishes to elect out of § 382(l)(5), such election must be made by the due date (including extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. Section 1.382-9(i).

The Election was required to be filed by the due date (including any extensions of time) of the taxpayer's tax return for the taxable year which includes Date 3, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. Entity has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Entity requested relief.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

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 a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. 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. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.382-9(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for the taxpayer to file the Election, provided

the taxpayer acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

The information, affidavit, and representations submitted by Entity and Company Official/Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i). The information also establishes that the taxpayer reasonably relied on a qualified tax professional who failed to make, or advise the taxpayer to make, the Election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that the taxpayer has established that it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date of this letter, for Entity to file the Election.

The above extension of time is conditioned on the taxpayers' (Entity and the members of its consolidated group) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayer's tax liability is lower. Section 301.9100-3(c).

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.

This letter ruling 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 must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)