Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-127198-17

Date:
February 21, 2018

Legend:

Company A =

Company B =
Company C =
Company D =
Company E =
Company F =
State X =
State Y =
QSLOB 1 =
QSLOB 2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Date 1 =

Dear :

This is in response to a letter dated August 31, 2017, in which you request, through your authorized representatives, an extension of time pursuant to § 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 a State X corporation that elects to be treated as an S Corporation for federal income tax purposes. Its principal offices are in State Y. Its fiscal year ends December 31.

Within its controlled group (as determined under section 414), Company A maintains a number of retirement plans that are qualified under section 401(a) (the Plans). In Year 1, pursuant to the qualified separate line of business rules under section 414(r), Company A timely filed a Form 5310-A (Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business), notifying the IRS that it treats itself as maintaining two separate lines of business within the controlled group, QSLOB 1 and QSLOB 2. Company A obtained a favorable administrative scrutiny ruling regarding such treatment from the Internal Revenue Service (IRS) under § 1.414(r)-6 of the federal Income Tax Regulations in Year 2.

In Year 3, Company A acquired a new controlled group member, Company B. Following such acquisition, Company A filed a request with the IRS seeking a determination that QSLOB 1 and QSLOB 2 satisfied the administrative scrutiny requirements with Company B included as part of QSLOB 2. In Year 4, Company A received a favorable administrative scrutiny ruling regarding this treatment, effective for the Year 5 testing year.

Company A timely filed a Form 5310-A for the Year 5 tax year, reflecting the acquisition of Company B and Company A's administrative scrutiny request regarding the treatment of Company B as part of QSLOB 2. Company A believed that the discussion on Form 5310-A of its request for an administrative scrutiny ruling regarding its intent to treat Company B as part of QSLOB 2 was sufficient to reflect that it was maintaining two QSLOBs for Year 5 and future years.

However, the Form 5310-A also contained the statement that, for Year 5 and any other fiscal plan years beginning before the requested administrative scrutiny ruling was received, Company A would treat Company B as a separate QSLOB under the mergers and acquisitions safe harbor of § 1.414(r)-5(d), and reflected Company B as a separate, third QSLOB. Despite this statement, Company A continued to perform nondiscrimination testing based on its two historical QSLOBs.

As a result of additional acquisitions, Company A's controlled group expanded to include the assets of Company C in Year 6, and the stock and assets (respectively) of Company D and Company E in Year 7. Company A formed Company F in Year 8 and

transferred certain of its employees to Company F. Following each of these acquisitions, Company A continued to treat itself as operating two QSLOBs (QSLOB 1 and QSLOB 2), but failed to file new Form 5310-As reflecting these transactions.

Company A ceased operating separate lines of business in Year 9.

Company A has consistently worked with legal counsel, tax professionals and consultants to make sure that it complied with the QSLOB rules. After receiving advice from legal counsel, Company A believed that the Form 5310-A filed in Year 6 was sufficient to reflect its QSLOB approach for Year 5 and future years. Also, based on advice from legal counsel, Company A believed that it was not necessary to update the Date 1 Form 5310-A to reflect changes in the controlled group. Company A also represents that the Plans would have satisfied the section 410(b) non-discrimination tests even if they had been tested for Year 5 and Year 6 in the manner described in the Date 1 Form 5310-A. Company A requested relief under § 301.9100-1 prior to the IRS discovery of any failure to file the election.

Company A requests a ruling that the IRS grant an extension of time pursuant to § 301.9100-1 to file an updated Form 5310-A for the Year 5, Year 6, Year 7, and Year 8 plan years to reflect the treatment of Companies B, C, D, E, and F for QSLOB purposes.

In general, section 414(r) 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 line of business.

Section 414(r)(2)(B) 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). 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) states that the regulations under §§ 301.9100-1, 301.9100-2, and 301.9100-3 provide the standards the IRS 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) 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) and section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

Section 301.9100-1(c) provides that the IRS, in its discretion, may grant a reasonable extension of time under the rules of §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-2 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 § 301.9100-2. The relief requested in this case is not referenced in § 301.9100-2.

Section 301.9100-3(a) provides that applications for relief that fall within § 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in § 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) 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 IRS; (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 IRS; 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) provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the IRS 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 represents that its Form 5500 filings are consistent with its reliance on its two historical QSLOBs for purposes of nondiscrimination testing prior to Year 9. Company A requested this relief prior to the IRS discovering the failure to file accurate Forms 5310-A. Thus, Company A satisfies clause (i) of § 301.9100-3(b)(1). In addition, although some of the tax years at issue are closed under the statute of limitations, there is no statute of limitations for plan qualification issues, including nondiscrimination concerns. Moreover, Company A represents that the Plans would have satisfied the section 410(b) non-discrimination tests if they had, in fact, been tested for Year 5 and Year 6 in reliance on the mergers and acquisitions safe harbor in the manner provided in the Form 5310-A originally filed for Year 5. The interests of the government thus 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 elections on Forms 5310-A for the Year 5, Year 6, Year 7, and Year 8 plan years with the appropriate office of the IRS.

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

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, section 11.05.

No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations that 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 representatives in accordance with a power of attorney on file with this office.

Sincerely,

Laura B. Warshawsky
Chief, Qualified Plans Branch 1
Office of the Associate Chief Counsel
(Tax Exempt & Government Entities)