

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202140007**

Release Date: 10/8/2021

Index Numbers: 9100.22-00, 382.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:1
PLR-102969-21

Date:
July 14, 2021

Legend

Taxpayer =

Date 1 =

Year 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 2, 2021, submitted on behalf of Taxpayer, requesting an extension of time under §§301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file a closing-of-the-books election under §1.382-6(b) of the Income Tax Regulations (the "Election") with respect to an ownership change within the meaning of section 382 of the Internal Revenue Code (the "Code"). The information provided is summarized below.

On Date 1, Taxpayer experienced an ownership change as defined in section 382(g) (the "ownership change") and, consequently, section 382(a) limited its ability to offset post-change taxable income and liabilities by pre-change losses.

An election under §1.382-6(b) to close its books with respect to the ownership change was due by the due date (including extensions) of Taxpayer's tax return for the Year 1 taxable year but, for various reasons, Taxpayer did not make the Election. Subsequently, Taxpayer submitted this request, under §301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under section 6501(a) has not expired for the taxable year for which the election should have been made or any subsequent taxable year. Taxpayer 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 section 6662.

Section 1.382-6(a) provides that except as provided in §1.382-6(b) and (d), a loss corporation must allocate its net operating loss or taxable income, and its net capital loss or modified capital gain net income, for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

Section 1.382-6(b)(1) allows a loss corporation to elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

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. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence that it 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., §1.382-6(b)(2)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided that Taxpayer establishes to the satisfaction of the Commissioner that it acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Taxpayer, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election. See §301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and representations made, we conclude that Taxpayer has shown it 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. Accordingly, we grant an extension of time under §301.9100-3, until 75 days from the date of this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's tax liability (if any) being not lower, in the aggregate, for the year to which the Election applies, and all subsequent years, 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 amount of the Taxpayer's tax liability for the year involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax return involved.

Taxpayer should file the election in accordance with §1.382-6(b)(2). Taxpayer's return must be amended to attach the election statement required by §§1.382-6(b)(2) and 1.382-11. A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching to the return a statement that provides the date on, and control number (PLR-102969-21) of, this ruling letter.

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. In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Taxpayer, Company Official and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

Thomas I. Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: