

Internal Revenue Service

Number: **202229030**
Release Date: 7/22/2022

Index Number: 1502.00-00, 1502.98-00,
1502.98-05, 9100.00-00,
9100.22-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:1
PLR-123545-21

Date:
April 20, 2022

Legend

Parent =

Parent2 =

Corp1 =

Corp2 =

Date1 =

Company Officials =

Tax Professionals =

Dear _____ :

This letter responds to a letter dated October 25, 2021, submitted on behalf of Parent and Parent2, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Parent and Parent2 are requesting an extension of time to file an election under §1.1502-95(c) of the Income Tax Regulations to apportion all or any part of a consolidated section 382 limitation to the Corp2 Subgroup (the "Election"). The material information submitted for consideration is summarized below.

Parent is the common parent of a federal consolidated group (the "Parent Group"). Parent2 is the common parent of a federal consolidated group (the "Parent2 Group").

Prior to Date1, the Parent Group included Corp1 and its subsidiaries (the "Corp1 Subgroup"), and the Corp1 Subgroup included Corp2 and its subsidiaries (the "Corp2 Subgroup"). On Date1, Parent2 acquired (through a disregarded entity for federal tax purposes) all the outstanding stock of Corp2. As a result of the acquisition, the Corp2 Subgroup experienced an ownership change and became members of the Parent2 Group. At that time, the Corp1 Subgroup had a section 382 limitation from a prior ownership change experienced by Corp1.

Under §1.1502-95(c), the common parent of a consolidated group may elect to apportion all or any part of a consolidated section 382 limitation to a former member (or loss subgroup) as well as all or any part of the loss group's net unrealized built-in gain to a former member (or loss subgroup). The election is made following the procedures set forth in §1.1502-95(f). Section 1.1502-95(f)(3) provides, in general, that the election statement under §1.1502-95(f)(1)(i) must be filed by the common parent on or with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member, and an identical statement must be included on or with the first return of the former member (or the first return in which the former member, or the members of a new loss subgroup, join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

For various reasons, Parent and Parent2 failed to make the Election in a timely manner. Parent and Parent2 have represented that they are not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662.

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 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 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 regulations (*i.e.*, §1.1502-95(f)(3)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent and Parent2 to file the Election, provided they show that their actions were reasonable and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Parent2, Company Officials, and Tax Professionals explain the circumstances that resulted in the failure to timely file the Election. The submission 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).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Parent2 have shown they 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, an extension of time is granted under §301.9100-3, until 75 days from the date on this letter, for Parent and Parent2 to file the Election. Parent and Parent2 should amend their returns to attach the Election, following the requirements of §1.1502-95(f). A copy of this letter must be attached to the returns. Alternatively, Parent and Parent2 may satisfy the requirement of attaching a copy of this letter by attaching a statement to their returns that provides the date on, and control number (PLR-123545-21) of, this letter ruling.

The above extension of time is conditioned on the taxpayers' tax liability (if any) not being lower, in the aggregate, for all the 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.

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 consequences of

filing the Election late under the provisions of any other section of the Code or 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 Parent, Parent2, Company Officials, and Tax Professionals under penalties of perjury. 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 taxpayers 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

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

cc: