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:

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CC:ITA:B01
PLR-113766-17

Date:
July 13, 2017

Taxpayer =
Date1 =
Date2 =
Date3 =
Date4 =
Date5 =
Date6 =
Date7 =
Date8 =
A =
B =
C =
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E =
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G =
H =

Dear :

This letter responds to your letter dated April 25, 2017, submitted on behalf of Taxpayer requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election described in Section 4 of Rev. Proc. 2011-29, 2011-18 I.R.B. 746, which includes attaching statements to Taxpayer's original consolidated federal income tax return for short taxable year ended Date1.

FACTS

Taxpayer is a corporation organized under the laws of A on Date2 and was the parent of an affiliated group of corporations that elected to join in the filing of consolidated

federal income tax returns under section 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter, collectively referred to as "Taxpayer's Consolidated Group".

The other members of Taxpayer's Consolidated Group are B and C. B is a corporation organized under the laws of D on Date3, and C is a corporation organized under the laws of D on Date4.

Each member of Taxpayer's Consolidated Group has an annual accounting period ending Date5 and uses an accrual method as its overall method of accounting for financial accounting and federal income tax purposes.

Taxpayer is a holding company. B owns and operates a paper mill in E. C owns and operates a corrugated packaging facility in F.

On Date1, G acquired all of the outstanding stock of Taxpayer (hereinafter, referred to as "the Transaction". The Transaction caused Taxpayer's Consolidated Group to terminate as a result of G becoming the new parent corporation. Also, the Transaction was a "covered transaction" described in section 1.263(a)-5(e)(3). During the short taxable year ended Date1, Taxpayer paid or incurred success-based fees, within the meaning of section 1.263(a)-5(f) in connection with the Transaction.

Taxpayer engaged H, a tax advisory and accounting firm, to prepare and file both an extension of time to file Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 and Taxpayer's consolidated federal income tax return for the short taxable year ended Date1. The unextended due date for Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 was Date6.

Prior to Date6, H took steps in an attempt to electronically file the extension and believed that the extension was timely filed, extending the due date of Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 to Date7. On or about Date6, H notified Taxpayer that the due date of Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 had been extended to Date7. On Date7, Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 was electronically filed by H and accepted by the Internal Revenue Service ("Service"). Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 was filed on a basis consistent with the safe harbor election described in section 4 of Rev. Proc. 2011-29 for success-based fees having been made.

On or about Date8, Taxpayer received a notice from the Service notifying Taxpayer of its assessment of a penalty for Taxpayer's failure to timely file Forms 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, for the taxable year ended Date1. Upon investigation, H discovered that its attempt to electronically file the extension of time for Taxpayer's consolidated federal income tax return for the short

taxable year ended Date1 was unsuccessful and, as a result, Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 was not timely filed. Thus, since Taxpayer's consolidated federal income tax return for the short taxable year ended Date1 was not timely filed, the safe harbor election described in section 4 of Rev. Proc. 2011-29 for success-based fees associated with this tax return was not timely filed.

LAW

Section 263(a)(1) of the Internal Revenue Code and § 1.263(a)-2(a) of the Income Tax Regulations provide that no deduction shall be allowed for any amount paid out for property having a useful life substantially beyond the taxable year. In the case of an acquisition or reorganization of a business entity, costs that are incurred in the process of acquisition and that produce significant long-term benefits must be capitalized. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 89-90, 112 S. Ct. 1039, 117 L. Ed. 2d 226 (1992); *Woodward v. Commissioner*, 397 U.S. 572, 575-576, 90 S. Ct. 1302, 25 L. Ed. 2d 577 (1970).

Under § 1.263(a)-5, a taxpayer must capitalize an amount paid to facilitate the business acquisition or reorganization transactions described in § 1.263(a)-5(a). In general, an amount is paid to facilitate a transaction described in § 1.263(a)-5(a) if the amount is paid in the process of investigating or otherwise pursuing the transaction. Whether an amount is paid in the process of investigating or otherwise pursuing the transaction is determined based on all of the facts and circumstances. See § 1.263(a)-5(b)(1).

Section 1.263(a)-5(f) provides that an amount paid that is contingent on the successful closing of a transaction described in § 1.263(a)-(5)(a) (i.e., a success-based fee) is presumed to facilitate the transaction. A taxpayer may rebut this presumption by maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction.

Section 4.01 of Rev. Proc. 2011-29 provides a safe harbor election for taxpayers that pay or incur success-based fees for services performed in the process of investigating or otherwise pursuing a covered transaction described in § 1.263(a)-5(e)(3). In lieu of maintaining the documentation required by § 1.263(a)-5(f), a taxpayer may elect to allocate a success-based fee between activities that facilitate the transaction and activities that do not facilitate the transaction and by treating 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction and by capitalizing the remaining 30 percent as an amount that does facilitate the transaction. In addition, the taxpayer must attach a statement to its original federal income tax return for the taxable year the success-based fee is paid or incurred, stating that the taxpayer is electing the safe harbor, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that 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. See also § 301.9100-3(b) and (c).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 45 days from the date of this ruling to file its mandatory statements as required by Section 4.01 of Revenue Procedure 2011-29, stating that it is electing the safe harbor for success-based fees, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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, including whether Taxpayer properly included the correct costs as success-based fees subject to the retroactive election, or whether Taxpayer’s transactions were within the scope of Rev. Proc. 2011-29.

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.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax year(s) affected. 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 provisions of the power of attorney currently on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lewis K Brickates

Lewis K Brickates
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: