

Internal Revenue Service

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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:B04

PLR-121964-18

Date:

February 13, 2019

Legend

Parent =

Acquired =

Sub 1 =

Sub 2 =

Sub 3 =

Merger Sub =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Year 11 =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

\$g =

\$h =

\$i =

\$j =

\$k =

\$l =

\$m =

\$n =

Company Official =

Tax Professional =

Firm 1 =

Firm 2 =

Dear :

This letter responds to a letter dated July 13, 2018, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under §1.1502-32(b)(4) to treat loss carryovers from certain separate return limitation years as expiring immediately before Acquired became a member of Parent's consolidated group, as described below (the "Election"). The material information is summarized below.

Parent is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis ("Parent Group"). On Date D, Parent Group, through the formation of a new wholly-owned subsidiary, Merger Sub, acquired all of the issued and outstanding classes of equity interests of Acquired, the common parent of a consolidated group ("Acquired Group"), through a reverse triangular cash merger. The transaction constituted a "qualifying cost basis transaction" within the meaning of §1.1502-32(b)(4)(ii)(A). The former members of the Acquired Group became members of the Parent Group beginning on Date E.

At the time of the acquisition, Acquired Group had consolidated net operating losses ("CNOLs") of \$a and no net capital loss carryovers (within the meaning of §1.1502-22(b)). Those CNOLs were composed of losses arising within the Acquired Group and losses arising outside the Acquired Group with respect to certain members of the Acquired Group that were acquired prior to Parent's acquisition of Acquired. Acquired Group acquired Sub 1 on Date C, Sub 2 on Date B, and Sub 3 on Date A.

On or before the due date of the Election, Parent's tax team and its service providers, Firm 1 and Firm 2, determined that some of the CNOLs would be unusable by Parent

Group on account of section 382 limitations and, as such, that an election should be made to treat such losses as expiring immediately before Acquired became a member of the Parent Group.

For Year 2 through Year 5, Sub 1 had CNOLs totaling \$b. On or before the due date of the Election, Parent's tax team and Firm 1 determined that all of such net operating losses would be unusable in future years on account of section 382 limitations. Accordingly, Parent intended to waive all \$b of such net operating losses.

For Year 2 through Year 4, Sub 2 had CNOLs totaling \$c. On or before the due date of the Election, Parent's tax team and Firm 1 determined that all of such net operating losses would be unusable in future years on account of section 382 limitations. Accordingly, Parent intended to waive all \$c of such net operating losses.

For Year 1 through Year 3 (more than three tax years), Sub 3 had CNOLs totaling \$d. On or before the due date of the Election, Parent's tax team and Firm 1 determined that all of such net operating losses would be unusable in future years on account of section 382 limitations. Accordingly, Parent intended to waive all \$d of such net operating losses.

For Year 7, Year 8, Year 9, Year 10, and Year 11, Acquired Group had CNOLs of \$e, \$f, \$g, \$h, and \$i, respectively. On or before the due date of the Election, and after taking into account the use of a portion of the CNOLs in the years prior to the acquisition of Acquired Group, and adjustments determined prior to that acquisition, Parent's tax team and Firm 2 determined that \$j of the remaining CNOL from Year 7, the entire CNOLs from Year 8 (\$f) and Year 9 (\$g), \$k of the remaining CNOL from Year 10, and \$l of the remaining CNOL from Year 11 (for a total from Year 7, Year 8, Year 9, Year 10, and Year 11 of \$m), would be unusable in future years on account of section 382 limitations. Accordingly, Parent intended to waive such unusable amounts of NOLs.

In summary, Parent intended to treat as expiring CNOLs of \$b, \$c, \$d, and \$m, for a total amount intended to be treated as expiring under the Election of \$n.

Section 1.1502-32 provides rules for adjusting the basis of the stock of one member of a consolidated group, S, owned by another member, M, to reflect S's items of income gain, deduction, and loss in order to treat the group members as a single entity. Section 1.1502-32(a)(1). Section 1.1502-32(b)(2) provides that M's basis in S's stock is adjusted to reflect, among other things, S's noncapital, nondeductible expenses. An expiring loss carryover is such a noncapital, nondeductible expense. See § 1.1502-32(b)(3)(iii).

Section 1.1502-32(b)(4)(i) provides that if S has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all federal income tax purposes immediately before S becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that such an election must be

made in a separate statement filed with the consolidated group's return for the year S becomes a member.

Parent intended to make the Election. The Election was due on Date F, the due date (including extensions) of the Year 6 Parent Group consolidated federal income tax return, but for various reasons a valid Election was not filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Election. Parent 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 at the time of the request for 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 301.9100-1(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. 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).

The time for filing the Election is fixed by the regulations, i.e., §1.1502-32(b)(4)(iv). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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.

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

Based on the facts and information submitted, including the representations made, we conclude that Parent 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, an extension of time is granted under

§301.9100-3, until 45 days from the date on this letter, for Parent to amend the Year 6 Parent Group consolidated federal income tax return to include the Election to treat a total amount of \$n of CNOLs as expiring immediately before Acquired became a member of Parent Group, as described above. A copy of this letter must be attached to the return. Alternatively, if Parent Group files its returns electronically, Parent Group may satisfy this latter requirement by attaching a statement to its return that provides the date on, and the control number (PLR-121964-18) of, this letter ruling.

The above extension of time is conditioned on the Parent Group's 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 amount of any CNOLs or as to Parent Group's tax liability for the years involved. A determination thereof will be made by the applicable Director's office 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 taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to the 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 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, 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 letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: