



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201247024

AUG 30 2012

UIC: 414.18-00, 9100.00-00

Attn: XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

T. EP. RA. T2

LEGEND:

Company F	=	XXXXXXXXXXXX
Firm A	=	XXXXXXXXXXXX
Year 1	=	XXXX
Year 2	=	XXXX
Year 3	=	XXXX
Year 4	=	XXXX
Year 5	=	XXXX
Date 1	=	XXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXX
Trustee A	=	XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to the XXXXXXXXXXXX, letter submitted on Company F's behalf in which it requests an extension of time pursuant to section 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 of 1986, as amended (the "Code") and sections 1.414(r)-1(b) and 1.414(r)-4 of the Income Tax Regulations ("I.T. Regulations").

Facts:

The following facts and representations have been submitted under penalties of perjury in support of Company F's ruling request:

Company F is a diversified holding company engaged in a variety of businesses domestically and abroad. Company F's United States subsidiaries are organized in QSLOBs for qualified plan testing purposes and there are no qualified employee benefit plans maintained by any member of the controlled group that are common to all members.

Company F engaged in numerous acquisition transactions that have changed the employee population of its controlled group since Year 2. For the Year 3 plan year, Company F elected to be treated as three separate QSLOBs under section 414(r) of the Code and filed an Internal Revenue Service Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business on Date 1. For the Year 4 plan year, because of changes in corporate ownership, Company F began operating only two QSLOBs. In Year 4, Company F made a number of corporate acquisitions. Company F determined it was required to include those companies in their controlled-group in the Year 5 plan year for testing purposes.

Company F has engaged Firm A to provide employee benefits and actuarial consulting services since Year 1. The services include retirement plan coverage and nondiscrimination testing for all entities in Company F's controlled group. Firm A provided testing services to determine whether Company F needed to elect additional QSLOBs to meet the coverage and nondiscrimination requirements for the Year 5 plan year. Firm A advised Company F that it would pass the applicable tests for that plan year without electing additional QSLOBs and that it did not need to file a Form 5310-A with the Internal Revenue Service (the "Service") by Date 2.

On Date 3, Firm A advised Company F that it had conducted additional testing and that Firm A's initial recommendation regarding QSLOB elections was incorrect. Firm A recommended that Company F file an election to maintain two additional QSLOBs for the Year 5 plan year. Firm A's recommendation was made after the deadline for submitting Form 5310-A had already passed for the Year 5 plan year as evidenced by an affidavit from Trustee A, trustee for Company F's various retirement plans.

Company F represents that other than its failure to file Form 5310-A in a timely manner, all requirements under section 414(r) of the Code are satisfied.

Ruling Requested:

Company F requests a ruling that under section 301.9100-3 of the P&A Regulations the filing of Form 5310-A as described above will be deemed as a timely filing for purposes of operating qualified separate lines of business under IRC section 414 (r) with respect to its Year 5 testing year.

Law:

In general, section 414 of the Code provides that for purposes of sections 129(d)(8) and 410(b) of the Code 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) of the Code and the minimum participation requirements of section 401(a)(26) of the Code) separately with respect to the employees in each qualified separate business line.

Section 414(r)(2)(B) of the Code 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) of the Code.

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B) of the Code. 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, in pertinent part, 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.

Under section 301.9100-1(c) of the P&A Regulations, the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory election or certain statutory elections under Subtitle A of the Code if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government.

Section 301.9100-1(b) of the P&A Regulations defines the term "regulatory election" as an election whose due date is prescribed by a regulation published

the Federal Register, or a 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 sections 414(r) of the Code (which is under Subtitle A) and section 3 of Rev. Proc. 93-40 is a regulatory election.

The Commissioner has authority under sections 301.9100-1 and 301.9100-3 of the Regulations to grant an extension of time if a taxpayer fails to file a timely notice of election under section 3 of Rev. Proc 93-40.

Section 301.9100-3 of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in section 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) of the P&A Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

- (i) Requests relief under this section before the failure to make the regulatory election is discovered by the Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Service; or
- (v) 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) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service 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 taxpayers receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made.

Analysis:

Pursuant to section 301.9100-1(b) of the P&A Regulations, an election by an employer to be treated as operating QSLOBs pursuant to section 414(r) of the Code and section 3 of Rev. Proc. 93-40 is a "regulatory election." Under section 301.9100-1(c) of the Regulations, the Commissioner of Internal Revenue may grant a reasonable extension of time to make a regulatory election or certain statutory elections under Subtitle A of the Code if the taxpayer demonstrates to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) that granting the relief will not prejudice the interests of the government.

Company F's ruling request contains an explanation describing the circumstances that caused its failure to give the Service timely notice of its QSLOB election for Year 5. Under section 301.9100-3(b)(1)(v), the taxpayer will be deemed to have acted reasonably and in good faith if it "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." Here, Company F's failure was due to its having reasonably relied on Firm A's recommendation that it would pass coverage and nondiscrimination testing without electing additional QSLOBs. The ruling request also provides an explanation of the actions Company F took following their discovery of this failure.

Furthermore, the interests of the government are not prejudiced by the Service granting Company F's request. Section 301-9100-3(c) of the P&A Regulations provides that ordinarily the Service 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 taxpayers receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability than if the election had been timely made. Here, the statute of limitations has not run for any tax years that would have been affected by the election had it been made timely. In addition, granting relief will not result in Company F having a lower tax liability than if the election had been timely made.

Conclusion:

With respect to Company F's request for relief, based on the information submitted and the representations contained herein, Company F is entitled to relief based on clauses (i) and (v) of section 301.9100-3(b)(1) of the P&A Regulations. As a result, we conclude that good cause has been shown for the failure to timely make the election provided for in section 3 of Rev. Proc. 93-40. Furthermore, we find that the government is not prejudiced by the issuance of this ruling and that the other requirements of section 301.9100-1 have been satisfied. Accordingly, the filing of Form 5310-A, as described above, will be deemed to be a timely filing for purposes of notifying the Service that Company F

is operating four qualified separate lines of business under section 414(r) of the Code with respect to the Year 5 plan year. Accordingly, Company F is granted an extension of 6 months from the date of the issuance of this ruling letter to file notification of the QSLOB election on Form 5310-A with the appropriate IRS office.


No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto. This ruling does not constitute a determination that a separate line of business may be treated as satisfying the requirement of administrative scrutiny within the meaning of section 1.414(r)-6 of the I.T. Regulations.

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.

Copies of this letter have been sent to your authorized representatives in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to XXXXXXXXXXXX.

Sincerely yours,

 (Jason Levine,  
Acting for  
Donzell Littlejohn)

Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: XXXXXXXXXXXX, Power of Attorney