

## 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:ITA:B06

PLR-123862-10

Date: November 30, 2010

Legend:

Taxpayer =

Debtor =

Liquidation Trust =

Trustee =

Accountant =

Reserves =

Plan =

Trust Agreement =

Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to your request dated June 8, 2010, requesting a ruling on behalf of Taxpayer. Specifically, you request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 1.468B-9(c)(2)(ii) of the Income Tax Regulations.

#### FACTS

On Date 1, Debtor filed for bankruptcy under Chapter 11 of the Bankruptcy Code. The Liquidation Trust was established to administer the Plan by Court's order confirming the Plan on Date 2. The Liquidation Trust was established for the sole purpose of holding, liquidating, and distributing its assets. As part of the Plan and Trust Agreement, Trustee was required to establish the Reserves to hold cash. Each of the Reserves is treated as a separate taxpayer. The Taxpayer is one of these Reserves.

In accordance with the Plan and Trust Agreement, Trustee was required to elect to treat each Reserve as a separate disputed ownership fund as defined in § 1.468B-9. This election is required to be made on a taxpayer's timely filed income tax return. Trustee is experienced in bankruptcy and restructuring matters, but has never been named as a trustee for a liquidating trust. On or about Date 3, Trustee contacted Accountant regarding the election and disputed ownership funds in general. Accountant provided general information, but did not consider Taxpayer to be its client. In between Date 4 and Date 5, Trustee contacted Accountant regarding filing income tax returns for Taxpayer. Accountant informed Trustee that it was unaware that it had been retained to file the tax returns. As a result, Taxpayer's income tax return was not timely filed on its due date, Date 4. Taxpayer submitted this request for § 301.9100-3 relief on Date 6.

#### LAW

Treasury Regulation § 1.468B-9(b)(1) provides that a disputed ownership fund means an escrow account, trust, or fund that (i) is established to hold money or property

subject to conflicting claims of ownership, (ii) is subject to the continuing jurisdiction of a court, (iii) requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant, and (iv) is not a qualified settlement fund under § 1.468B-1, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or a liquidating trust under § 301.7701-4(d) of this chapter (except as provided in paragraph (c)(2)(ii) of § 1.468B-9).

Under § 1.468B-9(c)(2)(ii), the trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. Pursuant to this election, creditors holding disputed claims are not treated as transferors of the money or property transferred to the disputed ownership fund. A trustee makes the election by attaching a statement to the timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. The election statement must include a statement that the trustee will treat the escrow account, trust, or fund as a disputed ownership fund and must include a legend, "§ 1.468B-9(c) Election," at the top of the page. The election may be revoked only upon consent of the Commissioner by private letter ruling.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. 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 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of § 301.9100-2 do not apply to a taxpayer's situation, the provisions of § 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election that does not meet the standards of § 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under § 301.9100-1(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making an election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3. Section 301.9100-3(c)(1)(ii).

The information and representations furnished by Taxpayer establish that it has acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted under § 301.9100-3 for Taxpayer to file the necessary § 1.468B-9(c) election statement. This extension shall be for a period of 45 days from the date of this ruling. Please attach a copy of this ruling to the election statement when it is filed.

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. This ruling is limited to the timeliness of the § 1.468B-9(c) Election. This ruling does not relieve Taxpayer from any penalty that it may owe as a result of the failure to timely file its income tax return.

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, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. 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.

The rulings contained in this letter are based upon information and representations submitted by the 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.

Sincerely,

Martin Scully, Jr.  
Senior Counsel, Branch 6  
(Income Tax & Accounting)