Uniform Issue List 9100.00-00

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 14 2002

200232034

T:EP:RA:T3

Att:

LEGEND:

Company A:

Company B:

State E:

State F:

State G:

Plan X:

Plan Y:

Administrator Z:

Law Firm ZA:

Law Firm ZB:

This is in response to the March 6, 2002, letter submitted on your behalf by your authorized representative, as supplemented by a letter dated April 19, 2002, in which you request an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations to file the notice of election described in section 3 of Revenue Procedure 93-40, 1993-2 C.B. 535 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)-l(b) and 1.414(r)-4 of the Treasury Regulations.

The following facts and representations support your ruling request.

Company A, headquartered in State E, is engaged primarily in the exploration for and the acquisition, development, production, marketing, and sale of, natural gas, natural gas liquids and crude oil. Company B, headquartered in State F, is engaged exclusively in the business of drilling gas and oil wells.

Company A sponsors Plan X for the benefit of its employees and the employees of its subsidiaries, other than Company B. Plan X was established June 6, 1985 and its Plan Year is the calendar year. Company A employed Administrator Z, located in State G, to perform administrative functions for Plan X. Company A, also employed outside ERISA counsel, Law Firm ZA, located in State G to work directly with Administrator Z and provide legal services with respect to Plan X. Company A relied upon both of their advisors for advice and ERISA compliance for Plan X.

On January 7, 1998, Company A completed the acquisition of all the drilling assets of Company B and operates the assets of Company B. Company A owns 100% of the outstanding stock of Company B. Company A established Plan Y, with an effective date of January 1, 1999, for the employees of Company B with the calendar year as its Plan Year. Company A relied upon both Administrator Z and Law Firm ZA for advice and ERISA compliance with respect to Plan Y.

For the 1999 and 2000 Plan Years, Administrator Z completed the coverage test on an aggregated basis for both Company A and Company B employees and determined that Plan X would not meet the coverage requirement unless Company A utilized the transition rule of Code section 410(b)(6)(C) or the QSLOB rules of the Code section 414(r). For 1999, Company A applied the transition rule of Code section 410(b)(6)(C) for Plan X to meet the Code section 410(b) coverage requirements.

For the 2000 Plan Year and subsequent Plan Years Company A intended for Plan X to utilize the separate line of business rules of Code section 414(r) and the regulations hereunder. Your authorized representative, Law Firm ZB, has presented a FAX, dated October 12, 2000, from a representative of Administrator Z, in which Company A was advised that it could maintain a separate line of business for Company B even before Plan Y was even established. This FAX also indicated that Company B was a separate line of business, and that the Internal Revenue Service had been so notified by means of the filing of the calendar year 1999 Form 5500.

In addition, Law Firm ZB, has provided a copy of the determination letter request (Form 5300 and Schedule Q) filed for Company A on October 2, 2001, relating to the

"GUST" amendments for Plan X by Law Firm ZA. The former counsel, Law Firm ZA, indicated on Schedule Q that employees of Company B were being excluded under the QSLOB rules. Part II, Line 5 (e)(4) of Schedule Q shows 800 employees were being excluded because they were employed by other QSLOBs.

However, Part II, Line 1 of Schedule Q indicates that Company A was not using the QSLOB rules. Law Firm ZA contacted Administrator Z who provided the employee information for both Company A and Company B. Law Firm ZA did not question the information provided by Administrator Z and prepared the request to the Internal Revenue Service for a determination letter showing the permitted exclusions of Company B's employees because of compliance with QSLOB requirements.

In October of 2001, Company A decided to move the administration of both plans to a new provider (effective December 1, 20001), and at the same time, decided to hire Law Firm ZB located in State E, since Company A's headquarters had moved to State E. Law Firm ZB discovered that Company A had not in fact given notice to the Internal Revenue Service of its election to operate QSLOBs. Company A was advised by Law Firm ZB that it should have filed Form 5310-A with the IRS by October 15, 2001 in order to treat Company A and Company B as QSLOBs. Neither Administrator Z's representative nor Law Firm ZA had instructed Company A to file an election to be treated as a QSLOB even though Company A had clearly intended to apply the QSLOB rules for the 2000 and subsequent Plan Years

Based on the above, you, through your authorized representative, request the following ruling:

> That good cause has been shown for the failure to timely make the election provided for in section 3 of Rev. Proc. 93-40, and further, that the other requirements of section 301.9100-I have been satisfied. Accordingly, an extension of 30 days from the date of this ruling letter is granted for Company A to make the above referenced election for all plan years beginning on or after January 1, 2000.

In general, 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 for bona fide business reasons operates separate lines of business. An employer operating QSLOBs will be permitted to apply those Code provisions separately with respect to the employees in each qualified separate business line. Code section 414(r)(2)(B) (Subtitle A) requires that an employer notify the Secretary of the Treasury that line of business is being treated as separate for purposes of Code sections 129(d)(8) and 410(b).

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 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 it 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) defines the term "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. Notice that an employer has elected to be treated as operating qualified separate lines of business pursuant to sections 414(r) of the Code 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 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 provides that the Commissioner will grant an extension of time when the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3 of the regulations provides that applications for relief that fall within section 301.9100-3 of the regulations will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)(2)) of the regulations 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 regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

(i) Request 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 Internal Revenue 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 taxpayer's receipt of a ruling granting relief under this section or if granting relief would result in a taxpayer having a lower tax liability.

Company A's request contains a detailed affidavit describing the events that led to the failure to give notice of it's QSLOB election and the discovery of the failure which description is consistent with Example 1 of section 301.9100-3(f) of the regulations. In December 2001, Company A's ERISA counsel, discovered that notice had not been given and Company A has promptly filed for relief in accordance with this section 301.9100-3 of the regulations. Under paragraph (b)(1)(i) Company A is deemed to have acted reasonably and in good faith because Company requested relief before the failure to make the regulatory election was discovered by the Internal Revenue Service.

Additionally, pursuant to paragraph (b)(1)(v), Company A is deemed to have acted in good faith since it relied on Administrator Z and Law Firm ZA to timely make it's QSLOB election. The 2000 Plan year is within the statute of limitations.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, good cause has been shown for the failure to timely make the election provided for in section 3 of Rev. Proc. 93-40, and further, that the other requirements of section 301.9100-I have been satisfied. Accordingly, an extension of 30 days from the date of this ruling letter is granted for Company A to make the above referenced election for all plan years beginning on or after January 1, 2000.

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 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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representatives.

If you have any questions about this ruling contact at

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: