

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Number: **199913010**
Release Date: 4/2/1999

Refer Reply To:
CC:DOM:CORP: 5 PLR-115164-98
Date:
December 22, 1998

Re:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Date A =

Date B =

Date C =

Date D =

Company
Official =

Outside
CPA =

Dear

This responds to your letter dated July 20, 1998, requesting an extension of time under §§ 301.9100-1 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and Subs to make an election to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as “the Election”), effective for their taxable year ending on Date A. Additional information was received in a letter dated September 24, 1998. The material information submitted for consideration is summarized below.

Parent is a Subchapter C corporation and the common parent of an affiliated group of corporations, owning 100 percent of the outstanding stock of Sub 1, Sub 2, Sub 3, and Sub 4 (“the Subs”), that have filed federal income tax returns on a separate company basis for taxable years through Date B. The group’s tax year is the calendar year.

Parent and the Subs intended to file the Election with Parent as the common parent of the group beginning with the group’s taxable year ending on Date A. The Election was due on Date C, but for various reasons the Election was not filed. On Date D (which is after the due date for the Election), Company Official and Outside CPA discovered that the Election was not filed. The statute of limitations on assessment under § 6501(a) has not run for Parent’s or the Subs’ taxable year for which they want to make the Election or for any taxable year that would be affected by the Election.

Under § 1501 an affiliated group of corporations has the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such returns. The making of a consolidated return is considered such consent.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return if it files a Form 1122. Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by the group for the immediately preceding taxable year.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for purposes not relevant here) shall be duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year.

Under § 301.9100-1(f), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

- (1) The taxpayer acted reasonably and in good faith,
and,
- (2) Granting relief will not prejudice the interests of the government.

In this case, the Election was required by §§ 1.1502-75(a)(1), 1.1502-75(b) and 1.1502-75(h) to be filed on Date C. However, for various reasons a valid election was not timely filed. Subsequently, Parent filed this request, under § 301.9100-1, for an extension of time to file the Election. The time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent and Sub show they 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.

Sections 301.9100-1 and 301.9100-3 provide that requests for extension of time

to file elections will be granted when the taxpayer(s) provides evidence (including the affidavits described in § 301.9100-3(e)) establishing that the taxpayer(s) acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Information, affidavits, and representations submitted by Parent, Company Official and Outside CPA, explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that tax professionals were responsible for the Election and Parent and the Subs relied on them to timely make the Election, and granting an extension will not prejudice the interests of the government.

Based on the facts and information submitted, including the representations made, we conclude that the taxpayers have shown they acted reasonably and in good faith in failing to timely file the Election, the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election (i.e., file a consolidated return, with Parent as the common parent, and attach a Form 1122 for each Sub) for their taxable year ending on Date A (and for succeeding years).

The above extension of time is conditioned on the taxpayers' (Parent's and each Sub's) tax liability 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 filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the District Director's office upon audit or examination 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' liability is lower. Section 301.9100-3(c).

Parent must file a consolidated return for its taxable year ending on Date A, and attach thereto the Election (a Form 1122, executed on or after the date of this letter granting an extension, for each Sub), pursuant to the instructions in § 1.1502-75(b). A copy of this letter should also be attached.

We express no opinion with respect to whether, in fact, Parent and the Subs qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or 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 effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1 we relied on certain statements and representations made by the taxpayer(s) and the taxpayers's Authorized Representative and employee(s). However, the District Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling 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 in this office, a copy of this letter is being sent to your authorized representatives as indicated on the power of attorney.

Sincerely yours,

By:

Bernita L. Thigpen
Deputy Assistant Chief Counsel
(Corporate)