

INTERNAL REVENUE SERVICE

Index Numbers: 1504.00-00

9100.00-00

Number: **199949011**

Release Date: 12/10/1999

CC:DOM:CORP:3 PLR-111167-99

September 7, 1999

Re:

Parent =

Sub =

Name =

Company A =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

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Year 3 =

Year 4 =

b =

c =

Mr. D =

This letter responds to your letter dated June 21, 1999, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file the waiver statement under Rev. Proc. 91-71, 1991-2 C.B. 900, with respect to the inclusion of Sub in Parent's consolidated federal income tax return for Year 2 and all subsequent taxable years. The information submitted for consideration is summarized below.

Parent, a State X corporation, is the common parent of an affiliated group of corporations that file a federal income tax return on a consolidated, calendar-year basis using an accrual method of accounting (the "Parent Group"). Prior to the deconsolidation transaction described below, Sub was a wholly owned subsidiary of Parent and was included in the consolidated return filed by the Parent Group. During such period, Sub was incorporated under Name.

On Date 1, Year 1, Parent transferred all of the stock of Sub, along with other property, to Company A in exchange for b percent (less than 80 percent) of the common stock of Company A (the "Reorganization"). As a result of the Reorganization, Sub ceased to be a member of the Parent Group and became a member of an affiliated group of corporations of which Company A was the common parent. Shortly after the Reorganization, Sub changed its name from Name to Sub.

On Date 2, Year 2, Parent purchased for cash an amount of Company A stock that increased Parent's holdings of Company A stock to approximately c percent (more than 80 percent)(the "Purchase"). At the time of the Purchase, Company A continued to hold all of the outstanding stock of Sub. Thus, as a result of the Purchase, Company A and Sub, as a wholly owned subsidiary of Company A, became members of the Parent Group on Date 3, Year 2.

The Parent Group filed a consolidated federal income tax return for Year 2. Sub was included in the Parent Group's Year 2 consolidated return for the period beginning

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Date 3, Year 2 and ending with the last day of Year 2. Sub was included in Parent's Year 2 consolidated return without taking into account the restrictions upon disaffiliation and reconsolidation of §1504(a)(3), *i.e.*, Parent did not attach to the Parent Group's Year 2 consolidated federal income tax return the waiver statement described in §5 of Rev. Proc. 91-71 (relating to the restrictions on disaffiliation and reconsolidation under §1504(a)(3)). Parent's discovery of this improper inclusion of Sub in Parent's Year 2 consolidated return was precipitated by a discussion that was held between an Internal Revenue Service revenue agent and a tax professional employed by Parent's tax department at a pre-audit conference held on Date 4, Year 4. Immediately thereafter Parent personnel reviewed Parent's Year 2 consolidated federal income tax return and determined that Parent had failed to file the waiver statement. Parent thereafter retained counsel and commenced the preparation of this request for relief under §301.9100-3.

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group and such corporation ceases to be a member of such group, the corporation (and any successor of such corporation) may not thereafter be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of the affiliated group.

Section 1504(a)(3)(B) provides that the Secretary may waive the application of §1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Rev. Proc. 91-71 provides procedural rules for obtaining a waiver from the application of §1504(a)(3)(A). If certain procedural requirements are satisfied, including the filing of the statement described in §5 of Rev. Proc. 91-71 (including, among other things, a description of the deconsolidation/reconsolidation events, related consolidated and separate taxable income figures, an analysis of the effect of the disaffiliation and reconsolidation on the consolidated group with respect to certain items, and a representation that the disaffiliation and reconsolidation will not provide a benefit that would not otherwise have been available if the disaffiliation and reconsolidation had not occurred), §3.01 of Rev. Proc. 91-71 grants a waiver for any corporation that left a consolidated group and rejoined the "same" group (*i.e.*, the consolidated group remained in existence within the meaning of §1.1502-75(d)). The waiver of §3.01 of Rev. Proc. 91-71 is available in this case because the deconsolidated subsidiary that is the subject of such waiver, Name, is rejoining the same consolidated group, *i.e.*, the Parent Group, *albeit* with a different name, *i.e.*, Sub.

Although Parent included Sub in its Year 2 consolidated federal income tax return, Parent inadvertently failed to file the waiver statement under Rev. Proc. 91-71 with such return. Pursuant to §7 of Rev. Proc. 91-71, the waiver statement was required to be filed on or before the due date (including extensions) of the Parent Group Year 2 consolidated return; *i.e.*, the waiver statement was required to be filed on or

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before Date 5, Year 3. Parent has therefore applied for an extension of time under §301.9100-3 to file the waiver statement with respect to the inclusion of Sub in its Year 2 (and thereafter) consolidated federal income tax return.

Section 301.9100-1(a) provides that the regulations under §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) also provides that §301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of §301.9100-2. Section 301.9100-1(b) provides that a regulatory election means an election whose due date is prescribed by, among other things, a revenue procedure. Section 301.9100-1(c) provides that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in §301.9100-3 to make a regulatory election under all subtitles of the Code (except subtitles E, G, H and I) (hereinafter, "§9100 Relief"). In this case, the time for filing the statement for the waiver of §1504(a)(3)(A) is fixed by §7 of Rev. Proc. 91-71. Therefore, the Commissioner has discretionary authority to grant the §9100 Relief, provided, however, the taxpayer provides evidence (including affidavits described in §301.9100-3(e)) that establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government. See §301.9100-3(a).

Parent has submitted the required information, including the affidavits required by §301.9100-3(e). An official of Parent, Mr. D, who acts on behalf of Parent with respect to tax matters, submitted an affidavit that establishes responsibility for applying for the §1504(a)(3)(B) waiver under Rev. Proc. 91-71 and describes in detail the circumstances that resulted in the failure to timely file the waiver statement under Rev. Proc. 91-71. The information establishes that Parent relied on in-house tax professionals employed by Parent to timely make the election, and that the government will not be prejudiced if relief is not granted.

Based on the facts and circumstances of this case, Parent is granted an extension of time until 30 days after the date of this ruling letter to file the waiver statement under Rev. Proc. 91-71. Parent must file an amended consolidated federal income tax return for Year 2 and attach thereto the statement described in §5 of Rev. Proc. 91-71 (including all the information specified therein). Parent must also attach a copy of this letter to such amended return.

The above extension of time granted under §301.9100-3 to file the waiver statement under Rev. Proc. 91-71 is conditioned on the Parent Group's and Sub's tax liability being not lower, in the aggregate, for all taxable years affected by the waiver than it would have been, in the aggregate, if the waiver statement had been timely filed (taking into account the time value of money) and no opinion is expressed as to the federal income tax effect, if any, if it is determined that the Parent Group's or Sub's tax liability is lower. No opinion is expressed as to the Parent Group's or Sub's tax liability

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for the years involved. A determination thereof will be made by the District Director's office upon audit of the federal income tax returns involved.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Bernita L. Thigpen

Bernita L. Thigpen
Deputy Assistant Chief Counsel (Corporate)