

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:CORP:03
PLR-106591-07

Date:
April 16, 2007

Legend

Taxpayer =

Subsidiary =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Tax Professional =

Company Official =

Dear :

This letter responds to a letter dated February 5, 2007, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is

being requested for Taxpayer to file an election under § 1.1502-75(a)(1) of the Income Tax Regulations to file a consolidated Federal income tax return with its includible subsidiary (the "Election") for the Date 1 tax year. The material information submitted for consideration is summarized below.

On Date 2, Taxpayer became the common parent of an affiliated group ("Taxpayer Group"), with Taxpayer directly owning Subsidiary. On Date 3, Taxpayer merged with and into Subsidiary. An election to file a consolidated return for the Date 1 tax year was due no later than the last day prescribed by law (including extensions of time) for the filing of Taxpayer's return for the Date 1 tax year. However, for various reasons, a valid election was not made. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired and will not expire until at least Date 4 for Taxpayer or Subsidiary for the Date 1 tax year.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding tax year may file a consolidated return in lieu of separate returns for the tax year, provided that each corporation which has been a member of the group during any part of the of the tax 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.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 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). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, 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 § 301.9100-3 to grant an extension of time to file the election, provided it is established that Taxpayer 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.

Information, affidavits, and representations submitted by or on behalf of Taxpayer, Tax Professional, and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election and that the interests of the Government will not be prejudiced if relief is granted. Section 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that it has been established that Taxpayer acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, provided Taxpayer Group qualifies substantively to file a consolidated return for the applicable tax year, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Taxpayer Group to file the Election by filing a consolidated return for the Date 1 tax year and including the required Forms 1122.

The above extension of time is conditioned on Taxpayer Group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money). No opinion is expressed as to Taxpayer Group's tax liability for the year involved. A determination thereof will be made upon audit 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 Taxpayer's Group's liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Taxpayer Group qualifies substantively to file a consolidated return. In addition, no opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by or on behalf of Taxpayer and/or its representatives. However, all essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer Group files its return electronically, Taxpayer Group may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: