

Internal Revenue Service

Department of the Treasury

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Refer Reply To:

CC:CORP:B03 - PLR-150782-01

Date:

February 14, 2002

LEGEND:

Parent =

Sub =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear

This responds to a letter from your authorized representative, dated September 20, 2001, 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 Parent and Sub 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 the taxable year ending on Date 1. The material information submitted for consideration is summarized below.

Parent is a calendar year domestic C corporation. Sub is a domestic limited liability company. On Date 2, Parent acquired the stock of Sub, which was an S corporation prior to Date 2.

On Date 3 (prior to the end of the taxable year), Sub was converted into a limited liability company. For federal tax purposes, the conversion was treated as a liquidation of Sub under § 332 and Sub is treated as a disregarded entity.

An election under §1.1502-75(a)(1) to file a consolidated return for the taxable year that ended on Date 1 was required to be filed by the due date of Parent's return (including extensions), but for various reasons the Election was not timely filed. The statute of limitations on assessment under § 6501(a) has not run for Parent's or Sub's taxable year for which they want to make the Election or for any taxable year that would be affected by the Election had it been timely filed.

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.

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 Internal Revenue 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. 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 § 301.9100-1 to grant an extension of time for Parent and Sub 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.

Information, affidavits, and representations submitted by Parent, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was initiated before the failure to make the Election was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Sub have shown 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. Accordingly, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for Parent to file the

Election. Parent must file a consolidated return for its taxable year ending on Date 1 and attach thereto a Form 1122, executed on or after the date of this letter granting an extension, for Sub, pursuant to the instructions in § 1.1502-75(b). A copy of this letter should also be attached to the return.

The above extension of time is conditioned on the taxpayers' (Parent's and Sub's) tax liability (if any) 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 made (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 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).

We express no opinion with respect to whether, in fact, Parent and Sub qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or 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 effects resulting from, filing the return or 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 Parent, Tax Professional, and Company Official. 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 letter is directed only to the taxpayer(s) 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 your authorized representative.

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

cc: