

Internal Revenue Service

Department of the Treasury

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CC:CORP:2 - PLR-125026-02

Date:

June 14, 2002

LEGEND

Parent =

Former Parent =

Sub #1 =

Sub #2 =

Year 1 =

Date A =

Date B =

Date C =

a =

b =

Company Official =

Tax Professional =

Dear

This letter responds to a letter dated April 25, 2002, submitted on behalf of Parent, 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, Former Parent, Sub #1, and Sub #2 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, effective for Year 1 (sometimes hereinafter referred to as the "Election"). Additional information was received in a letter dated June 4, 2002. The material information is summarized below.

Parent, Former Parent, Sub #1, and Sub #2 are domestic corporations with calendar tax years that use the accrual method of accounting. Prior to Date A (a date in Year 1), Parent held a% (i.e., less than 80%) of the only class of Former Parent stock outstanding. Prior to Date A, Former Parent was the common parent of an affiliated group (the "Former Parent Group") consisting of itself, Sub #1, and Sub #2, which filed consolidated income tax returns. On Date A, Parent acquired b% of the stock of Former Parent in a transaction not constituting a reverse acquisition within the meaning of § 1.1502-75(d)(3), giving Parent more than 80% of the Former Parent stock, and, because Parent is an includible corporation, terminating the Former Parent Group. Nevertheless, the Former Parent Group filed a consolidated income tax return for Year 1. Parent filed a separate return for its Year 1.

The Election was due on Date B, but for various reasons a valid Election was not filed. On Date C (after the due date for the Election), it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-1, for an extension of time for Parent, Former Parent, Sub #1, and Sub #2 to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's, Former Parent's, Sub #1's, or Sub #2's taxable years for which they want to make the Election, the taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 1.1502-75(a)(1) provides that a group which did not 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 (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed no later than the last day

prescribed by law (including extensions of time) for the filing of 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)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent shows it 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 a valid Election. The information establishes that a qualified tax professional was responsible for the Election, that Parent relied on that qualified tax professional who failed to make, or advise Parent to make, the Election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it 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 (by filing a consolidated return for Year 1, including Forms 1122 and 851). A copy of this letter should be attached to the return.

The above extension of time is conditioned on the taxpayers' (Parent's, Former Parent's, Sub #1's, and Sub #2'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 applicable 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether Parent, Former Parent, Sub #1, and Sub #2 qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax 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 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 Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to 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.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

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

cc: