

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:B03

PLR-121813-13

Date:

June 19, 2013

LEGEND

Parent =

Holdings =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Company Official =

Tax Professional =

Dear :

We respond to the April 26, 2013, letter 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, Holdings, and Sub 1 through Sub 11 (hereinafter, excluding Parent, “Subsidiaries”) 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”)), for the taxable year ending on Date 5.

Additional information was submitted in a letter dated May 31, 2013. The material information is summarized below.

Holdings was formed on Date 1 for the purpose of acquiring the stock of several corporations. On Date 2, Parent was formed for the sole purpose of holding the stock of Holdings and the stock of Holdings was contributed to Parent upon Parent's formation. On Date 3, Holdings acquired the stock of 11 domestic corporations, Sub1 through Sub 11.

Beginning with the taxable year ending on Date 4, through the taxable year ending on Date 6, Holdings and Sub 1 through Sub 11 filed what was purported to be a consolidated Federal income tax return, with Holdings as the common parent. (The return for the taxable year ending on Date 6 inadvertently excluded Sub 12, a dormant corporation). Parent filed a separate return beginning with the taxable year ending Date 4. Upon discovering that Parent should have been included as the common parent on the consolidated returns, this request to make the Election for the taxable year ending on Date 5 was filed.

An election under § 1.1502-75(a)(1) to file a consolidated return for the taxable year ending on Date 5, by the filing of a valid consolidated income tax return and satisfying the requirements of § 1.1502-75(h)(2), was required to be filed by the due date of Parent's Federal income tax return (including extensions) for Parent's taxable year ending on Date 5. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.

The period of limitations on assessment under § 6501(a) has not expired for Parent's or any of Subsidiaries' taxable years ending on Date 5 or for any subsequent taxable year.

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 to the satisfaction of the Commissioner 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 for Parent and Subsidiaries to file the Election, provided that 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 a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiaries 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 § 301.9100-3, until 30 days from the date on this letter, for Parent to file the Election by filing a consolidated return with Parent as the common parent and attaching a Form 1122 for each subsidiary member for the year ending on Date 5. Parent must attach a copy of this letter to the return. Alternatively, if such return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to the return that provides the date and control number (PLR-121813-13) of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Parent's, Subsidiaries', and Sub 12'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 Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether, in fact, Parent and Subsidiaries 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 § 301.9100-3 we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that the 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 is directed only to the taxpayer 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 have been sent to your authorized representatives.

Sincerely,

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

cc: