

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:B05

PLR-119887-18

Date:

October 17, 2018

Legend

New Common Parent =

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representative, dated June 20, 2018, requesting an extension of time under § 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 § 1.1502-21(b)(3)(i) of the Income Tax Regulations (the “Election”) to relinquish the entire carryback period with respect to a consolidated net operating loss (“CNOL”) of the consolidated group of which Taxpayer was the common parent for the short taxable year that ended on Date 2. Additional information was received in subsequent correspondence dated July 18, 2018, July 25, 2018, and August 30, 2018. The material information is summarized below.

Prior to Date 2, Taxpayer wholly owned Subsidiary 1, Subsidiary 2 and Subsidiary 3 (the “Subsidiaries”), and the Subsidiaries joined Taxpayer in the filing of a U.S. consolidated income tax return. On Date 2, Taxpayer was acquired by New Common Parent, an unrelated third party, in a transaction that Taxpayer has represented does not qualify as a “reverse acquisition” within the meaning of § 1.1502-75(d)(3). As a result of the acquisition, Taxpayer’s consolidated group ceased to exist, its taxable year terminated as of the end of Date 2, and on Date 3, Taxpayer and Subsidiaries joined a different U.S. affiliated group with New Common Parent as the common parent.

Taxpayer filed a short period consolidated return for its consolidated group for the period Date 1 through Date 2. Taxpayer intended to relinquish the carryback period for its consolidated group’s CNOL on its tax return for the taxable year that ended on Date 2. For various reasons, a valid Election was not filed. Subsequent to Taxpayer filing the return, it was discovered that the Election had not been filed. Thereafter, Taxpayer submitted this request, 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 for the taxable year for which the election should have been filed or any subsequent taxable year.

Taxpayer represents that the consolidated group of which it was the common parent for the taxable year ended Date 2 has not carried back, and will not carry back, any portion of the CNOL to a prior consolidated return year of the Taxpayer consolidated group or another consolidated group. Taxpayer also represents that no member of the consolidated group of which Taxpayer was the common parent for the taxable year that ended on Date 2 had a separate return year, within the meaning of § 1.1502-1(e) at any time during the carryback period. Furthermore, Taxpayer represents that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time release is requested.

Section § 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled “THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT.” Section § 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group’s income tax return for the consolidated return year in which the loss arises.

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 that 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 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., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided that Taxpayer shows that 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 Taxpayer, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Taxpayer relied upon a qualified tax professional who failed to make, or advise Taxpayer to make, the Election, and that the request for relief was filed before the Internal Revenue Service discovered the failure to make the Election. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including representations made, we conclude that Taxpayer 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, we grant an extension of time under § 301.9100-3, until sixty days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's consolidated group's tax liability, if any, and the tax liability, if any, of the consolidated group of which a member of Taxpayer's consolidated group becomes a member being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, 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 amount of tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

Taxpayer should amend its return to file the election in the manner described in § 1.1502-21(b)(3)(i) and the instructions to Form 1120. A copy of this letter should be attached to the amended return. Alternatively, if Taxpayer files its amended return electronically, it may satisfy this latter requirement by attaching to the return a statement that provides the date and control number (PLR-119887-18) on this ruling letter.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, we express no opinion as to the tax effects or any other 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 effects 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 Taxpayer, Tax Professional, and Company Official. The appropriate Service office, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

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