

## 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-133698-18

Date:

May 01, 2019

### Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated November 9, 2018, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension is being requested for Parent and its affiliated subsidiaries (the "Parent Group") 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 (the "Election"), for the taxable year ending on Date 3. Additional information was submitted in letters dated February 27, 2019 and April 16, 2019. The material information submitted for consideration is summarized below.

Parent, Sub 1, and Sub 2 were formed on Date 1. On Date 2, Sub 2, which was wholly-owned by Sub 1, which in turn was wholly-owned by Parent, acquired all of the stock of Sub 3, which owned all of the stock of Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, and Sub 9. An election for the Parent Group to file a consolidated income tax return, with Parent as the common parent, for the taxable year ending on Date 3 was due on the last day prescribed by law (including extensions of time) for the filing of Parent's return. However, for various reasons, a valid Election (i.e. the filing of the consolidated return) was not filed by the due date of Parent's return. This request was submitted under § 301.9100-3, for an extension of time to file the Election.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations 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, in accordance with § 1.1502-75(b) of the regulations, 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 the filing of the common parent's return.

The period of limitations on assessment under § 6501(a) has not expired for the taxable year ending on Date 3 or any subsequent taxable year. Parent has represented that it is not attempting to alter a return position taken for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief and for which the new position requires or permits a regulatory election for which relief is requested.

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 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 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 the Election. The information establishes 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).

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, provided that Parent Group qualifies substantively to file a consolidated return for the taxable year ending on Date 3, an

extension of time is granted under § 301.9100-3, until sixty (60) 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 of its affiliated subsidiaries) for its taxable year ending on Date 3. Parent must attach a copy of this letter ruling to such return, or if Parent files the return electronically, a statement must be attached to the return that provides the date on, and the control number (PLR-133698-18) of, this letter ruling.

The above extension of time is conditioned on Parent Group'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 Parent Group's 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.

We express no opinion with respect to whether, in fact, the Parent Group qualifies 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. 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 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

*T. Ian Russell* \_\_\_\_\_

T. Ian Russell  
Branch Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)