

## Internal Revenue Service

## Department of the Treasury

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Date:

**June 5, 2001**

Parent =

Sub =

State X =

Country X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Parent Official =

Sub Official =

Outside CPA =

This responds to a letter from your authorized representative, dated December 28, 2000, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Parent and Sub to file two elections.

One election (the "First Election") is a request by Parent and Sub for an extension of time to elect to file a consolidated federal income tax return under § 1.1502-75(a)(1) of the Income Tax Regulations. The other election (the "Second Election") is a request by Parent

and Sub for an extension of time for Sub to elect to be treated as a domestic corporation under § 953(d) of the Internal Revenue Code. The First Election and the Second Election would be effective for the Year 1 taxable year of Parent and Sub. This letter addresses the request for an extension to file the First Election. A separate letter will address the request for an extension to file the Second Election. The material information submitted for consideration is summarized below.

Parent and Sub are calendar year corporations. On Date1, Parent formed Sub. Parent is a licensed reinsurance intermediary in State X. Sub is domiciled in Country X as a property and casualty insurance company. The First Election was due on Date 2, but for various reasons it was not timely filed. On Date 3 (which is a date after Date 2), Outside CPA discovered that the First Election was not timely filed. On Date 4, a consolidated federal income tax return was filed for Parent and Sub.

The statute of limitations on assessment under § 6501(a) has not expired for Parent's or Sub's taxable year for which they want to make the First Election or for any taxable year that would be affected by that Election.

Section 1501 provides that an affiliated group of corporations has the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

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.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return if it files a Form 1122.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by

the group for the immediately preceding taxable year.

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. § 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under Section 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. § 301.9100-3(a).

In this case, the time for filing the First Election is fixed by §§ 1.1502-75(a)(1), 1.1502-75(b) and 1.1502-75(h). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and Sub to file the First 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, Parent Official, Sub Official and Outside CPA explain the circumstances that resulted in the failure to timely file the First Election. The information also establishes that the request for relief was filed before the failure to timely file the First Election was discovered by the Service, that taxpayers have taken a reporting position that is consistent with making the First Election, 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 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. Accordingly, if Parent receives an extension of time to file the Second Election, an extension of time is granted under § 301.9100-1 for Parent to file the First Election (by filing a new Form 1122, executed on or after the date of this letter). A copy of this letter should be attached to the Form 1122. The extension with respect to the First Election is granted until 30 days from the later of the date of issuance of this letter or the letter granting relief with respect to the Second Election (if such a letter is in fact issued).

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 First Election applies, than it would have been if the First 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. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' liability is lower. § 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 First 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 First 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 Official, Parent's authorized representative, and Sub Official. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 to file the First Election, any penalties and interest that would otherwise be applicable still apply.

Even though the Service, in this letter, has granted the extension with respect to the First Election, such Election will have no effect unless the Service also grants relief with respect to the Second Election because Parent and Sub cannot make the First Election unless it can also make the Second Election. Therefore, the ruling in this letter with respect to the First Election is not effective unless the taxpayer receives a favorable ruling with respect to the Second Election and properly makes the Second Election.

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

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your Authorized Representative.

Sincerely yours,  
Associate Chief Counsel (Corporate)  
By: Ken Cohen  
Senior Technician Reviewer, Branch 3