

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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CC:CORP:B05

PLR-100705-08

Date:

March 25, 2008

### LEGEND

Acquiring =

Taxpayer =

Subsidiary1 =

Subsidiary2 =

Subsidiary3 =

Subsidiary4 =

Subsidiary5 =

Subsidiary6 =

DateA =

DateB =

Acquiring Official =

Tax Professional =

Dear :

This letter responds to a letter dated December 14, 2007, requesting on behalf of Acquiring, successor in interest to and substitute agent for Taxpayer, 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 Acquiring to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations (hereinafter referred to as the “Election”) to relinquish the entire carryback period for the consolidated net operating loss (“CNOL”) of the consolidated group of which Taxpayer was the common parent for the taxable year ending DateA. Additional information was received in subsequent correspondence. The material information is summarized below.

Taxpayer was the common parent of a consolidated group (including Subsidiary1 through Subsidiary6) which sustained a CNOL in the short taxable year ending DateA and which filed a consolidated Federal income tax return for the DateA taxable year.

On DateA, Taxpayer merged with and into Acquiring, terminating the Taxpayer consolidated group. Acquiring has stated that Acquiring became, and remains, the “Agent for the Group” within the meaning of § 1.1502-77 for the Taxpayer consolidated group.

It is represented that the consolidated group of which Taxpayer was the common parent for the taxable year ended DateA has not, and will not, carry any portion of the CNOL back to a prior consolidated return year of the consolidated group. It is also represented that no member of the consolidated group of which Taxpayer was the common parent for the taxable year ended DateA had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period, with the sole exception of Subsidiary4 and Subsidiary6. Further, it is represented that none of the CNOL for the Taxpayer consolidated group for the taxable year ended DateA was attributable to either Subsidiary4 or Subsidiary6.

Taxpayer’s return for the taxable year ending DateA was timely filed on DateB. Acquiring intended to relinquish the carryback period for the Taxpayer consolidated group’s CNOL on this tax return and the return was filed consistent with a valid election having been made. However, for various reasons, a valid election to relinquish the carryback period was not timely filed. Subsequent to DateB, it was discovered that a

valid election had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may elect to relinquish the 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 SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE 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) provides that the statement must be filed with the group’s income tax return for the consolidated return year in which the CNOL 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.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Acquiring to file the Election, provided Acquiring 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 Acquiring, Acquiring Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the election. The information establishes: that Acquiring reasonably relied on a qualified tax professional who failed to make, or advise Acquiring to make, a valid Election; that the request for relief was filed before the failure to make the Election was

discovered by the Internal Revenue Service; and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Acquiring has shown 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. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Acquiring to file the Election.

The above extension of time is conditioned on the tax liability (if any) of Taxpayer's consolidated group and, also, the tax liability (if any) of any 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 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 amount of tax liability is lower. Section 301.9100-3(c).

Acquiring should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer's consolidated group's return must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement. Alternatively, if Acquiring files the amended return electronically, Acquiring may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-100705-08) of this ruling letter.

#### CAVEAT

We express no opinion as to whether Taxpayer and its subsidiaries qualify to file a consolidated return. 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 Acquiring, Acquiring Official, and Tax Professional. However, the appropriate Service office 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.

Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter.

#### PROCEDURAL STATEMENTS

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

Pursuant to a power of attorney on file in this matter, 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)