

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B02-PLR-116817-00

Date:

October 30, 2000

### LEGEND:

Parent =

Sub #1 =

Sub #2 =

Sub #3 =

Sub #4 =

Date 1 =

Date 2 =

Date 3 =

Date D =

State X =

State Y =

Business A =

Business B =

Business C =

Business D =

Former Company Official =

Outside Tax Professional =

Authorized Representative =

Company Official =

Dear :

This responds to your Authorized Representative's letter dated August 28, 2000, requesting an extension of time, under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election (the "Election") under

§ 1.1502-75(a)(1) of the Income Tax Regulations. The extension is being requested for Parent, Sub 1, Sub 2, Sub 3, and Sub 4 (Sub 1, Sub 2, Sub 3, and Sub 4 are hereinafter collectively referred to as the "Subsidiaries") to make an election to file a consolidated federal income tax return, with Parent as the common parent, effective for their taxable year that ended on Date 2. Additional information was received in a letter dated October 24, 2000. The material information submitted is summarized below.

Parent was formed as a State X corporation on Date 1 (a date in Parent's taxable year ending Date 2). Subsequently, during that same taxable year, Parent formed the Subsidiaries. Parent is a holding company for Subsidiaries. Sub 1, Sub 2, and Sub 3 are all State X corporations wholly owned by Parent. Sub 1 is engaged in Business A. Sub 2 is engaged in Business B. Sub 3 is engaged in Business C. Sub 4 is a State Y corporation engaged in Business D and wholly owned by Sub 2.

Parent and the Subsidiaries intended to file the Election with Parent as the common parent of the group beginning with the taxable year that ended on Date 2. The Election was due on Date 3, but for various reasons the Election was not filed. The period of limitations on assessments under § 6501(a) has not expired for the taxable year in which the acquisition occurred, the taxable year in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed. Further, it is represented that: (1) all returns were filed as if a valid Election had been made and it was disclosed on such returns that relief was being requested under § 301.9100-3 to make such election, (2) the applicable taxable year(s) has (have) not been examined and (3) the Service has not discovered that the Election was not timely filed.

Section 1501 provides that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for 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. 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.

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. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. 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 regulation (*i.e.*, § 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent (and the Subsidiaries) to file the Election, provided Parent and the Subsidiaries show that they acted reasonably and in good faith, that the requirements of §§ 301.9100-1 through 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits and representations submitted by Parent, Former Company Official, Company Official, and Outside Tax Professional explain the circumstances that resulted in the failure to file the Election. The information establishes that: (1) all returns were filed as if a valid Election had been made and it was disclosed on such returns that relief was being requested under § 301.9100-3 to make such election, (2) the applicable taxable year(s) has (have) not been examined and (3) the Service has not discovered that the Election was not timely filed. The information also establishes that competent tax professionals were responsible for the Election and were aware of all relevant facts, that Parent and the Subsidiaries relied on the tax professionals to make the Election timely, 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 Parent (and the Subsidiaries) have shown that they acted reasonably and in good faith in failing to file the Election, the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to

file the Election (i.e., to file a consolidated return with Parent as the common parent, executed on or after the date of this letter, and attaching thereto a form 1122 and a copy of this letter) for Parent's and the Subsidiaries' taxable year ending on Date 2.

The above extension of time is conditioned on the taxpayers' (i.e. Parent's and the Subsidiaries') 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 filed (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 District Director's office upon audit or examination 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 taxpayers' liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, Parent and the Subsidiaries qualify substantively to file a consolidated return (e.g., whether the requisite voting and value requirements of § 1504 are satisfied). In addition, we express no opinion as to the 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 resulting from, filing the election late that are not specifically set forth in the above ruling. For purposes of granting relief, we relied on certain statements and representations made by the taxpayers. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable shall still apply.

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

Copies of this letter are being sent to the first listed authorized representative, pursuant to a power of attorney on file in this office.

Sincerely yours,  
Associate Chief Counsel (Corporate)  
(by) Ken Cohen, Acting Chief, Branch 3