

## Internal Revenue Service

Number: **201905004**

Release Date: 2/1/2019

Index Numbers: 9100.22-00, 1502.21-00

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-125440-18

Date:

November 01, 2018

## LEGEND

Parent =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 21, 2018, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension is being requested for Parent to make an election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Parent consolidated group's consolidated net operating loss ("CNOL") for the tax year ending Date 1 (the "Election"). Additional information was submitted in a letter dated October 11, 2018. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group ("Parent Group"). The Parent Group sustained a CNOL in the tax year ending on Date 1. Parent intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for the tax year ending Date 1. All returns for the Parent Group were filed consistent with a valid election having been made. However, for various reasons, a valid election was not filed. After Date 2, the date that the Election was due, it was discovered that a valid election was not filed. Subsequently, this request was submitted for an extension of time to file a valid election.

Parent has represented that the Parent Group has not and will not carry back any portion of the CNOL for the tax year ending Date 1 to a prior consolidated return year of the Parent Group. Parent has also represented that no member of the consolidated group of which Parent was the common parent for the tax year ending Date 1 had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period.

Parent has further represented that Parent 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 Parent requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election under § 172(b)(3) 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 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) 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 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 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 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 Parent to file the Election, provided Parent establishes 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 a valid election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

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, an extension of time is granted under § 301.9100-1, until 60 days from the date on this letter, for Parent to file the Election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ending Date 1, as described above.

The above extension of time is conditioned on the taxpayers' (Parent and the members of its consolidated group) 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 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.

Parent must file the Election in accordance with § 1.1502-21(b)(3)(i). The Parent Group's return for the tax year ending Date 1, having been filed consistent with a valid election having been made, must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter must be attached to the election statement. Alternatively, if the Parent Group files its returns electronically, Parent may satisfy this requirement by attaching a statement to its return that provides the date on and control number of this letter ruling.

We express no opinion as to the tax effects or 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 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. Moreover, 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 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.

Pursuant to the power of attorney on file in the office, copies of this letter are being sent to your authorized representatives.

Sincerely,

*Ken Cohen*

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

cc: