

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-160994-05

Date:

March 03, 2006

### LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Tax Professional =

Company Official =

Taxable Year =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated November 29, 2005, 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 file an election. Parent is requesting an extension to elect under § 1.1502-75(a)(1) of the Income Tax Regulations to file a consolidated Federal income tax return with its includible subsidiaries (the "Election") effective for Taxable Year. The material information is summarized below.

On Date 1, Parent formed Sub 1, Sub 2 and Sub 3 ("Subs") as wholly owned subsidiaries. Thus, a new affiliated group that included Parent and Subs came into existence with Parent as the common parent.

An election under § 1.1502-75(a)(1) for the Parent affiliated group to file a consolidated return for Taxable Year, its first taxable year, was due on Date 2. A return consistent with a valid consolidated return election having been made was filed by the affiliated group on Date 3. However, for various reasons, the Election was not timely filed. After the due date for the Election, it was discovered that the Election had not been timely filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's, Sub 1's, Sub 2's or Sub 3's taxable year for which it desires to make the Election or for any taxable years that would be affected by the Election had it been timely filed.

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.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Subs to file the Election, provided Parent and Subs 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, Tax Professional, and Company Official 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, 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 Parent and Subs have shown 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, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election for Taxable Year. Parent and Subs, having filed a return as though a valid Election was made, must amend their previously filed return to attach a copy of this letter. Alternatively, if Parent and Subs file their return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the 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 taxpayers' (Parent and Subs) tax liability for the years involved. A determination thereof will be made by the appropriate office of the Service 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether, in fact, Parent and Subs qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax consequences of filing the Election and/or return 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 and/or return 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 the taxpayers. 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 letter is directed only to the taxpayer(s) 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 this office, 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)