

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:4-PLR-112977-00
Date:
February 2, 2001

Parent =
Sub 1 =
Sub 2 =
Date A =
Date B =
Date C =
Date D =
Date E =
Date F =
Company Official =
Tax Professional =
Authorized Representative =

This letter responds to your letter dated June 9, 2000, requesting, on behalf of the taxpayers identified in the above legend, an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent requests an extension of time for Parent, Sub 1, and Sub 2 to make an election to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as “the Election”), effective for their taxable year ending on Date A. Additional information was received in a letter dated January 3, 2001. The material information submitted for consideration is summarized below.

Parent, a holding company, was formed on Date B to hold the stock of Sub 1.

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On Date C, Sub 1 shareholders transferred their Sub 1 stock to Parent in exchange for Parent stock. Parent is inactive with no taxable income. On Date D, Parent acquired all of the outstanding stock of Sub 2 in a reorganization represented to qualify under § 368(a)(1)(B) but which did not constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3). After the acquisition of Sub 2, a consolidated return was filed for Sub 1 and Sub 2 on Date E. However, Parent was not included in the return. On Date F, (which is after the due date for the Election), Company Official and Tax Professional discovered the omission of Parent. Subsequently, this request was submitted to the Service, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessments under § 6501(a) has not expired for Parent's, Sub 1's and Sub 2's taxable year in which the transaction was consummated, the taxable year in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Under § 1501, 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 immediate 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

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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 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 extension 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 regulations (*i.e.*, §§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 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. Section 301.9100-3(a).

Information, affidavits, and representations submitted by Parent, Company Official, Tax Professional, and Authorized Representative explain the circumstances that resulted in the failure to file a valid Election. The information also establishes that Tax Professional was responsible for the Election, that Parent relied on the Tax Professional to make the Election, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has established it acted reasonably and in good faith in failing to timely file the Election, 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 § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election (*i.e.*, file a consolidated return, with Parent as the common parent, and attach a Form 1122, executed on or after the date of this letter, for Sub 1 and Sub 2) for their taxable year ending on Date A. A copy of this letter should also be attached.

The above extension of time is conditioned on the taxpayers' (Parent's, Sub 1's and Sub 2's) tax liability 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

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liability for the years involved. A determination thereof will be made upon audit of 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. Section 301.9100-3(c).

No opinion is expressed as to whether Parent, Sub 1, and Sub 2 qualify to file a consolidated return. In addition, no opinion is expressed 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayer, its employees and representatives. However, all essential facts are subject to verification. In addition, notwithstanding that an extension is granted under § 301.9100-1 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.

A copy of this letter is being sent to the taxpayer, pursuant to a power of attorney on file in this office.

Sincerely,
Associate Chief Counsel (Corporate)
By :Vicki J. Hyche
Chief, Branch 4