

Internal Revenue Service

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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:B01
PLR-141154-04

Date:
September 10, 2004

In Re:

Corp X =

Corp Y =

Taxable Year =

Date A =

Date B =

Date C =

Company Official =

Tax Professional =

Dear :

This letter replies to your authorized representative's letter of July 29, 2004 seeking relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for

Corp Y and its subsidiaries to make an election to file a consolidated Federal income tax return, with Corp Y as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election"), effective for Taxable Year. The information submitted is summarized below.

Corp X had been the common parent of a consolidated group. On Date A, a subsidiary of Corp Y merged into Corp X in a reverse subsidiary merger after which Corp Y owned the stock of Corp X. On Date B, new shareholders purchased stock of Corp Y and stock of public shareholders of Corp Y was redeemed as part of an integrated transaction that involved Corp Y's acquisition of Corp X. Accordingly, the Corp X affiliated group went out of existence and a new affiliated group that included members of the Corp X consolidated group came into existence with Corp Y as the common parent.

An election under § 1.1502-75(a)(1) for the Corp Y affiliated group to file a consolidated return for Taxable Year, its first taxable year, was due on Date C. However, for various reasons, a valid election was not filed. The statute of limitations on assessment under § 6501 has not run for Corp X, Corp Y, or any of their subsidiaries' taxable years for which they want to make the Election or for any taxable year 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 301.9100-2 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 Corp Y and its subsidiaries to file the Election, provided Corp Y and its subsidiaries 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 Corp Y, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Corp Y reasonably relied on a qualified tax professional who failed to make, or advise Corp Y to make, the Election, that the request for relief was initiated before the failure to make the Election was discovered by the Internal Revenue Service, and that 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 Corp Y and its subsidiaries 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 90 days from the date on this letter, for Corp Y to file the Election (by filing a consolidated return, with Corp Y as the common parent, and attaching a Form 1122 for each of Corp Y's subsidiaries) for Taxable Year.

Corp Y must file a consolidated return for Taxable Year and attach thereto a Form 1122 for all of Corp Y's subsidiaries, pursuant to the instructions in § 1.1502-75(b). A copy of this letter should also be attached to the return.

The above extension of time is conditioned on the taxpayers' (Corp Y's and its 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 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 appropriate office of the Internal Revenue 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 with respect to whether, in fact, Corp Y and its subsidiaries qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or 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 Corp Y, Company Official and Tax Professional. However, the appropriate office of the Internal Revenue Service should verify all essential facts.

Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still 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.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Ken Cohen

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

cc: