

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-162591-05
Date:
February 13, 2006

TY:

Parent =

Sub =

Date1 =

Date2 =

Date3 =

Date4 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated December 14, 2005, submitted on behalf of Parent, requesting an extension of time under § 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) to file a consolidated Federal income tax return with its includible subsidiary (the "Election") for the taxable year ending Date2. The information submitted is summarized below.

On Date1, Parent acquired 100% of the outstanding shares of stock of Sub pursuant to a transaction in which a transitory merger sub formed by Parent merged with and into Sub with Sub surviving as a wholly owned subsidiary of Parent. The transaction was intended to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E).

An election under § 1.1502-75(a)(1) for the group to file a consolidated return for the taxable year ending Date2 was due on Date3. However, for various reasons a valid Election was not filed. The period of assessment under § 6501(a) has not expired and

will not expire until at least Date4 for Parent and Sub for the taxable year ending Date2, and for any subsequent years.

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 § 1.1502-75(a)(1) of the Income Tax Regulations. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Sub to file the Election, provided Parent and Sub show that 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, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, the request for relief was filed 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 Parent and Sub have shown that 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, provided Parent and Sub

qualify substantively to file a consolidated return for the taxable year ending on Date2, an extension of time is granted under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent and Sub to file the Election by filing a consolidated return for the taxable year ending on Date2 and attaching a Form 1122 for Sub.

The above extension of time is conditioned on Parent's consolidated group's tax liability (if any) being not lower, in the aggregate, for the taxable year for which the Election applies, and all subsequent years, 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 Parent's consolidated group's 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. 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).

We express no opinion with respect to whether Parent and Sub 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 § 301.9100-3 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 the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Ken E. Cohen

Kenneth E. Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)