



Company Official =

Dear :

This letter responds to a letter dated September 29, 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 file a request for a waiver, pursuant to Rev. Proc. 91-71, 1991-2 C.B. 900, of the application of § 1504(a)(3)(A) with respect to Sub #2. The request for an extension to file for a waiver of the application of § 1504(a)(3)(A) is hereinafter sometimes referred to as the "Election." Additional information was received in letters dated December 12, 2005, January 18, 2005, and February 7, 2005. The material information is summarized below.

Prior to Date A, Sub #1 was a member of the Parent consolidated group. Sub #1 was deconsolidated from the Parent consolidated group on Date A. On Date B, Parent purchased 100% of the Sub #1 stock from Seller. On Date C (the date immediately following Date B), Sub #1 was merged with and into Sub #2, a subsidiary of Parent and a member of the Parent consolidated group. Sub #2 was included in the Year 1 (the year including Date C) Parent group's consolidated federal income tax return. That return did not include the request for an automatic waiver of the application of § 1504(a)(3)(A) described in section 5 of Rev. Proc. 91-71, 1991-2 C.B. 900. No other request for a waiver of the application of § 1504(a)(3)(A) was filed with respect to Sub #2.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984, then with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61<sup>st</sup> month beginning after its first taxable year in which it ceased to be a member of such affiliated group. Section 1504(a)(3)(B) authorizes the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Section 3 of Rev. Proc. 91-71, which was in effect with respect to the Parent group Year 1 return, grants a waiver under § 1504(a)(3)(B) to any corporation described in § 4.01 of the revenue procedure that requests an automatic waiver by complying with the requirements of the revenue procedure, including a requirement that a statement containing certain information be attached to the timely filed (including extensions)

consolidated return for the taxable year of the group in which the corporation rejoins the group.

The Election was due on Date D, the due date (including extensions) of the Year 1 Parent group consolidated federal income tax return, but for various reasons a valid Election was not filed. After the due date for the Election, Parent learned that such an election was available and 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 consolidated group's, Sub #1's, or Sub #2's taxable years in which the reaffiliation occurred or for any years that would have been affected by the Election had it been timely filed.

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 Rev. Proc. 91-71. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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 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, and that the interests of 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 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 § 301.9100-3, until 60 days from the date on this letter, for Parent to file a consolidated federal income tax return for the Parent group for Year 1, amended to include the information required by Rev. Proc. 91-71. A copy of this letter must be attached to such return; alternatively, if the amended return is filed electronically this requirement may be satisfied by attaching to that return a statement that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the Parent group's and Sub #1's, or Sub #2'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 Parent group's, Sub #1's, or Sub #2's tax liability for the years involved. A determination thereof will be made by the applicable 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to the tax 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. Specifically, we express no opinion as to whether Sub #2 qualifies for the automatic waiver provided in Rev. Proc. 91-71. 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 representatives.

Sincerely,

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