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Dear :

This letter responds to a letter dated April 17, 2007, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. The extension is being requested in order to allow Parent to treat the loss subgroup parent requirement as satisfied pursuant to § 1.1502-91(d)(4) ("Election"). The material information is summarized below.

Parent is the common parent of a consolidated group which files its tax returns on a calendar year basis. In Year 2, pursuant to a stock purchase agreement dated Date 1, Purchaser, a member of Parent's consolidated group, acquired all the stock of Subsidiary 1 and Subsidiary 2. Prior to the acquisition, Subsidiary 1 and Subsidiary 2 were members of the Seller consolidated group, but did not bear the relationship described in § 1504(a)(1) through a loss subgroup parent immediately after the acquisition (the "loss subgroup parent requirement").

The Election was required to be filed with Parent's income tax return for its Year 2 tax year. However, for various reasons, Parent failed to make the Election in a timely manner. Subsequently it was discovered that a valid election had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. All tax returns have been filed consistent with a valid election having been filed.

Section 1.1502-91(d)(4) provides that a consolidated group may elect to treat acquired corporations as meeting the loss subgroup parent requirement immediately after they become members of the group if the common parent of the acquiring group makes an election with respect to those members. Section 1.1502-96(e) provides that the election is made by the common parent of the consolidated group attaching a statement making the election to its income tax return for the year of the acquisition.

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.*, § 1.1502-96(e)). 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 that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that 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 and that the interests of the government will not be prejudiced if the 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 that 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 45 days from the date on this letter for Parent to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's and its members) 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 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).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Subsidiary 1 and Subsidiary 2 constitute a loss subgroup. In addition, we express no opinion as to the tax effects or consequences of filing 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 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 under penalties of perjury. 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 Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: