

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:6  
PLR-140586-08

Date:  
November 05, 2008

Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Date 1 =

Company Official =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated September 10, 2008, requesting on behalf of Parent an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under § 1.1502-75(a)(1) to file a consolidated Federal income tax return with its includible subsidiaries (the "Election") for the year ending Date 1. Additional information was submitted on November 4, 2008. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations ("Parent Group"). Subsidiary 1 is wholly owned by Parent. Subsidiary 2 is wholly owned by Parent.

Parent, Subsidiary 1, and Subsidiary 2 intended to file a consolidated return for Parent Group's tax year ending Date 1. The Election for Parent Group to file a consolidated return for the tax year ending Date 1 was due no later than the last day prescribed by law (including extensions of time) for the filing of Parent's return. However, for various reasons, a valid Election was not made. 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 or any member of Parent Group for the tax year ending Date 1.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding tax year may file a consolidated return in lieu of separate returns for the tax year, provided that each corporation which has been a member of the group during any part of the tax 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(a)(1).

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 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. Section 301.9100-3 provides extensions 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 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 Parent to file the Election, provided Parent establishes 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.

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 request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has established that 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, provided Parent Group qualifies substantively to file a consolidated return for the applicable tax year, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent Group to file the Election by filing a consolidated return for the tax year ending Date 1 and including the required Forms 1122.

The above extension of time is conditioned on Parent Group's tax liability, if any, not being 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). We express no opinion as to Parent Group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, we express no opinion as to the Federal income tax effect, if any, if it is determined that Parent Group's 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 Parent Group qualifies 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 resulting from, filing the Election late that are not specifically set forth in the above ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This ruling 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 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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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