

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:CORP4:
PLR-113696-09

Date:
May 19, 2009

Legend

- Taxpayer =
- Former Parent =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Subsidiary 1 =
- Subsidiary 2 =
- Subsidiary 3 =
- Subsidiary 4 =
- Tax Professional =
- Company Official 1 =

Company Official 2 =

Dear :

This letter responds to your letter dated March 10, 2009, submitted on behalf of Taxpayer, the successor in interest to Former Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayer is requesting an extension to make an election to file a consolidated Federal income tax return, with Former Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (the "Election"), effective for the taxable year ending Date 1. Additional information was received in letters dated April 8 and May 6, 2009. The material information submitted in the request and the later correspondence is summarized below.

Former Parent was formed on or about Date 2. On Date 3, Former Parent acquired all of the issued and outstanding stock of Taxpayer in a transaction that did not constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3). Prior to the acquisition, Taxpayer was the common parent of an affiliated group that filed a consolidated return and included Subsidiary 1, Subsidiary 2, Subsidiary 3, and Subsidiary 4. On Date 4, Former Parent was merged downstream into Taxpayer with Taxpayer surviving.

The Election was required to be filed by the due date of Former Parent's return (including extensions), but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted by Taxpayer, under § 301.9100-3, for an extension of time to file the Election.

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. 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)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Former Parent (by Taxpayer, its successor in interest) and its includible subsidiaries to file the Election, provided Former Parent and Taxpayer 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.

The information, affidavits, and representations submitted by Taxpayer, Tax Professional, Company Official 1, and Company Official 2 explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes 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).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer has established that Former Parent and Taxpayer 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, an extension of time is granted under § 301.9100-3, until Date 5, for Former Parent by Taxpayer, its successor in interest, and its includible subsidiaries to file the Election (by filing a consolidated return, with Former Parent as the common parent, and attaching a Form 1122 for each of the includible subsidiaries) for the taxable year ending Date 1.

The above extension of time is conditioned on the taxpayers' (Former Parent, Taxpayer, and their 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 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).

Except as expressly provided herein, no opinion is expressed as to the tax consequences of any aspect of any transaction or item discussed in this letter. In particular, no opinion is expressed with respect to whether Former Parent 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 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. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the appropriate Service office 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 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.

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.

In accordance with the 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)