

**Internal Revenue Service**

Number: **200936021**

Release Date: 9/4/2009

Index Number: 9100.20-00, 1502.75-00

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:CORP:B05

PLR-103893-09

Date:

May 29, 2009

LEGEND

Grandparent =

Parent =

Sub1 =

Sub2 =

StateA =

TaxableYear1 =

TaxableYear2 =

DateA =

DateB =

DateC =

DateD =

Parent Official =

Previous Parent Official =

Previous Tax Professional =

Dear :

This letter responds to a letter dated January 9, 2009, submitted on behalf of Parent, requesting the Internal Revenue Service (“Service”) to grant an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its includible subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (“hereinafter referred to as “the Election”) effective for TaxableYear1. Additional information was received in subsequent correspondence. The material information is summarized below.

Parent is a corporation incorporated in DateA under the laws of StateA. Shortly after its incorporation in DateA, Parent acquired all the stock in a domestic subsidiary, Sub1 with Sub1 acquiring all the stock in a second domestic corporation, Sub2. As of the end of TaxableYear1, Parent directly held all the stock in Sub1 and Sub1 directly held all the stock in Sub2. (This is hereinafter referred to as “Parent Group”).

On DateC, in an unrelated transaction, at a time subsequent to the matters discussed herein, all the stock in Parent was acquired by Grandparent.

The Election for Parent Group to file a consolidated return for TaxableYear1 was due on DateB. However, for various reasons, the Election by Parent was not filed. Subsequent to DateC, it was discovered that the Election had not been filed.

Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file the Election for Parent Group.

As of the date the request for this ruling was submitted to this office, the Service had not contacted Grandparent, Parent, or any member of Parent Group concerning Parent Group's failure to timely file a consolidated Federal income tax return for TaxableYear1 or any subsequent year. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code ("Code") has not expired for Parent's (or any other Parent Group member's) TaxableYear1, or for any taxable years that would have been affected by the Election had it been timely filed. The period of limitations on assessment for Parent Group's TaxableYear1 will expire no earlier than DateD.

Section 1.1502-75(a)(1) provides that an affiliated group of corporations 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, in accordance with § 1.1502-75(b)(1). 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.

With regard to the consent of a corporation for a group's first consolidated year, § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in § 1.1502-75(h).

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 the term "regulatory election." 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. (§ 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and its subsidiaries to file the Election, provided that Parent and its subsidiaries show they 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, Parent Official, Previous Parent Official and Previous 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.

Based solely on the information and affidavits submitted and the representations made, we conclude that Parent and its subsidiaries 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.

Provided Parent Group qualifies substantively to file a consolidated return for TaxableYear1, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter (PLR-103893-09), for Parent Group to file the Election by filing a consolidated return for TaxableYear1 in accord with all applicable regulations. See § 1.1502-75(a)(1).

The above extension of time is conditioned on the tax liability (if any) of Parent Group 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 amount of 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 amount of tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether, in fact, Parent and its subsidiaries qualify substantively to file a consolidated return for TaxableYear1 or TaxableYear2 or any other taxable year. Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter.

In addition, 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 effects resulting from, filing the Election late that are not specifically set forth in the above ruling. 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.

For purposes of granting relief under § 301.9100-3, we relied upon certain information, representations, and affidavits submitted by Parent, Parent Official, Previous Parent Official, and Previous Tax Professional, with all submissions accompanied by a penalties 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, all of this material is subject to verification on examination.

#### PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested 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, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-103893-09) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Virginia S. Voorhees*

Virginia S. Voorhees  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Corporate)