



Company Officials =

Tax Professional =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representative, dated October 8, 2009, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations (the "Election") to relinquish the entire carryback period with respect to a consolidated net operating loss ("CNOL") of the consolidated group of which Taxpayer was the common parent for the short taxable year ending Date 3. Additional information was received in subsequent correspondence dated December 23, 2009 and February 3, 2010. The material information is summarized below.

#### Summary of Facts

Prior to Date 1, Old Common Parent wholly owned, directly or indirectly, Taxpayer and its subsidiaries. Taxpayer and its subsidiaries joined Old Common Parent in the filing of a U.S. consolidated income tax return. On Date 1, sufficient stock in Taxpayer was sold to third parties, causing Taxpayer to disaffiliate from the Old Common Parent affiliated group. As a result of the stock sale, Taxpayer and its subsidiaries became a separate U.S. affiliated group with Taxpayer as the common parent.

Taxpayer filed a separate short period consolidated return for the period between Date 2 and Date 3. Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for the taxable year ending Date 3. For various reasons, a valid Election was not filed. Subsequent to Taxpayer filing the return, it was discovered that the Election had not been filed. Thereafter, Taxpayer submitted this request, 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 the taxable year for which the election should have been filed or any subsequent taxable year.

Taxpayer represents that the consolidated group of which it was the common parent for the tax year ended Date 3 has not, and will not, carry any portion of the CNOL back to a prior consolidated return year of the Taxpayer consolidated group. Taxpayer also

represents that neither Taxpayer nor any member of its consolidated group had a separate return year at any time during the carryback period other than a separate return year in which it was a member of Old Common Parent's consolidated group. Old Common Parent represents that none of the CNOL for taxable year ended Date 3 attributable to Taxpayer's consolidated group has been carried back, or will be carried back, to a separate return year, within the meaning of § 1.1502-1(e), of such corporations in which they were members of Old Common Parent's consolidated group.

Section 1.1502-21(b)(3)(i) allows a group to make an irrevocable election under § 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year.

Section 172(b)(3) allows any taxpayer entitled to a carryback period under § 172(b)(1) to elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year.

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 that 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., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided that Taxpayer shows 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 Taxpayer and Company Officials 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 Internal Revenue Service discovered the failure to make the Election. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including representations made, we conclude that Taxpayer 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, we grant an extension of time under § 301.9100-3, until forty-five days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's consolidated group's tax liability and the tax liability of any consolidated group of which a member of Taxpayer's consolidated group becomes a member (if any) being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, 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 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 amount of tax liability is lower. See § 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer's return must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching to the return a statement that provides the date and control number (PLR-145767-09) of this ruling letter.

#### Caveats

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.

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 addition, we express no opinion as to the tax effects or any other 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. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Taxpayer, Tax Professional, Old Common Parent, and Company Officials. The appropriate Service office, however, 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.

Procedural Statements

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.

Sincerely,

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