

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:CORP:BR5

PLR-128224-12

Date:

September 06, 2012

New Parent =

Old Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Company Official =

Tax Professional =

a =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representatives, dated June 28, 2012, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election to file a consolidated income tax return effective for the taxable year ending Date 4. The material information submitted in that request and later correspondence is summarized below.

Summary of Facts

Prior to Date 1, Old Parent was the common parent of an affiliated group of corporations that also included Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6. Old Parent and its affiliates filed a consolidated return on a calendar year basis.

On Date 1, New Parent acquired a percent of the outstanding common stock in Old Parent through the use of a merger subsidiary. Old Parent then merged into Sub 1, with Sub 1 surviving the merger. The transaction resulted in a new affiliated group with New Parent as the common parent.

The Old Parent affiliated group filed a final consolidated return for taxable year ending Date 1.

The members of the New Parent affiliated group intended to file a consolidated return for the taxable year ending Date 3 that included the results of operations of the members of the former Old Parent consolidated group for the short period Date 2 through Date 3. For various reasons, however, a valid election was not timely made. The statute of limitations under 6501(a) of the Internal Revenue Code for the taxable year ending Date 3 is closed; therefore, New Parent requests an extension of time to make an election to file a consolidated income tax return effective for the taxable year ending Date 4. The statute of limitations has not expired for such year.

New Parent has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662.

Ruling

Section 1.1502-75(a)(1) of the Income Tax Regulations permits a group that did not file a consolidated return for the immediately preceding taxable year to file a consolidated return in lieu of separate returns for the taxable year. Each corporation that was a member of the group during any part of the taxable year for which the consolidated return is to be filed must consent (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. A group exercising its privilege of filing a consolidated return must file the consolidated return not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(h)(1) provides that the consolidated return for the group is made by the common parent on Form 1120, *U.S. Corporation Income Tax Return*.

Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, a Form 1122, *Authorization and Consent of a Subsidiary Corporation to be Included in a Consolidated Tax Return*, must be executed by each subsidiary and must be attached to the consolidated return for such 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 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 to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The time for making the election to file a consolidated return is fixed by the regulations (i.e., § 1.1502-75). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for New Parent to file a valid election, provided that New Parent shows 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 New Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that New Parent reasonably relied on a qualified tax professional who failed to make, or advise New Parent to make, the election to file consolidated returns. See 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including affidavits submitted and representations made, we conclude that New Parent 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 Date 5, for New Parent to make an election to file a consolidated income tax return for the taxable year ending Date 4 (by filing a consolidated return, with New Parent as the common parent and attaching Forms 1122 for each other member of the New Parent affiliated group). A copy of this letter should be attached to the consolidated return. Alternatively, if New Parent files its return electronically, New Parent may satisfy this latter requirement by attaching to the return a statement that provides the date and control number (PLR-128224-12) of this ruling letter.

The above extension of time is conditioned on the New Parent's consolidated group's tax liability, its members' liability, and the tax liability of any consolidated group of which a member of New Parent'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.

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 New Parent, Company Official, and Tax Professional. 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 representatives.

Sincerely,

Ken Cohen

Ken Cohen

Senior Technician Reviewer, Branch 3

Office of Associate Chief Counsel (Corporate)