

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:B02
PLR-138989-16

Date:
May 11, 2017

In re:

Legend

Parent =

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State A =

Company Official =

Tax Professional =

Dear

This letter responds to a letter dated November 25, 2016, and additional correspondence, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time for Parent and the members of its affiliated group (the "Parent Group") 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 (the "Election"), for the taxable year ending Date 4. The material information submitted for consideration is summarized below.

Parent is a domestic corporation incorporated under the laws of State A on Date 1. Y is a domestic corporation incorporated under the laws of State A on Date 1 as a wholly-owned subsidiary of Parent.

Prior to Date 3, X was the common parent of a consolidated group (the "X Consolidated Group"). On Date 2, Parent, X, and Y entered into an Agreement and Plan of Merger (the "Merger Plan"). On Date 3, under the Merger Plan, X merged with Y, with X as the surviving entity. As a result of the Merger, Parent acquired 100% of the stock issued and outstanding in X from X's former shareholders in exchange for a right to receive cash, terminating the X Consolidated Group.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, 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, in accordance with § 1.1502-75(b) of the regulations, 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 the filing of the common parent's return.

An election for the Parent Group to file a consolidated income tax return for the taxable year ending Date 4, was due on the last day prescribed by law (including extensions of time) for the filing of Parent's return. For various reasons, however, a valid Election was not filed. Subsequently, Parent discovered that a valid the Election had not been filed and submitted, under § 301.9100-3, this request 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 ending Date 4 or any subsequent taxable year. 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 at the time of the request

for relief and the new position requires or permits a regulatory election for which relief is requested.

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). 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 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 to the satisfaction of the Commissioner 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 a valid 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 timely 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 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, provided the Parent Group qualifies substantively to file a consolidated return for the applicable taxable year, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each of its affiliated subsidiaries for its taxable year ending Date 4.

The above extension of time is conditioned on the 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 the Parent Group's tax liability for the

years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

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 on and control number of the letter ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter.

In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. 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 Internal Revenue 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 this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. 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 letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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