

**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:B04

PLR-109029-17

Date:

August 04, 2017

Legend

Parent =

Subsidiary =

Partnership =

Target =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Company  
Official =

Tax  
Professional =

Dear :

This letter responds to a letter from your authorized representative, dated March 13, 2017, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its affiliated subsidiaries (the "Parent Group") 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 (the "Election"), for Year 1. The material information provided in that letter is summarized below.

Parent is a corporation that owns all of the stock of Subsidiary. Both Parent and Subsidiary are holding companies that were formed by Partnership on Date 1 for purposes of acquiring Target. Subsidiary acquired all of the outstanding stock of Target on Date 2 (the "Transaction"). Target is a holding company that was the common parent of an affiliated group of corporations, composed of Target and its own subsidiaries ("Old Group").

Subsidiary's acquisition of Target on Date 2 terminated the Old Group. On Date 3, Subsidiary and the members of the Old Group filed a consolidated return showing Subsidiary, instead of Parent, as the common parent of the affiliated group. At the time of filing of such return, Subsidiary was unaware of Parent's existence. Subsidiary believed that it was the common parent of the affiliated group resulting from the Transaction. Tax Professional was engaged to prepare the return of the affiliated group, and it advised Subsidiary regarding the need to make an election to file a consolidated return for the affiliated group. Subsidiary relied on Tax Professional to make such election. Tax Professional filed the consolidated return on Date 3 with Subsidiary as the common parent based on information it had received from Subsidiary.

Subsequently, Tax Professional discovered the formation and existence of Parent, and that Subsidiary had been inappropriately identified as the common parent on the consolidated return. Accordingly, Tax Professional advised Parent to file a request for relief on its own behalf to make a late election to file a consolidated return for the Parent Group, effective for Year 1. Such election was due on the last day prescribed by law (including extensions of time) for the filing of Parent's return for Year 1, but for the aforementioned reasons, a valid Election was not filed by the due date of Parent's return. After the due date for the Election, it was discovered that the Election had not been filed properly. Subsequently, Parent submitted, under § 301.9100-3, this request for an extension of time to file the Election effective for Year 1. The period of limitations on assessment under § 6501(a) has not expired for Year 1 or any subsequent taxable year. Parent has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.

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.

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 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 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 Parent, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent (through Subsidiary) reasonably relied on a qualified tax professional who failed to make, or to advise Parent to make, the proper Election, and 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) and (v).

Based on the facts and information submitted, including 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 that 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, for 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 Year 1).

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). No opinion is expressed as to the Parent Group's tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether, in fact, the Parent Group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or 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 effects resulting from, filing the return or 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 Parent, Company Official and Tax Professional, accompanied by a penalty of perjury statement executed by an appropriate party. However, the Director 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

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