

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201901007**
Release Date: 1/4/2019

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.22-00, 1502.21-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:1
PLR-117313-18
Date:
October 09, 2018

TY:

Legend

Parent =

Date 1 =

Date 0 =

\$x =

Company Officials =

Tax Professional =

Dear :

This letter responds to a letter dated May 22, 2018, requesting, on behalf of Parent, 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 to make an election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Parent consolidated group’s consolidated net operating loss (“CNOL”) for the tax year ending Date 1. Additional information was submitted in a letter dated July 31, 2018. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group (“Parent Group”). Parent Group generated a CNOL in the tax year ending on Date 1. Parent originally carried the CNOL to a prior consolidated return year of Parent Group ending on Date 0 which resulted in a tax refund of \$x. Subsequently, Parent unilaterally returned the cash refund it had

received from the Internal Revenue Service as a result of the carryback and has since sought this extension to relinquish the carryback period. Parent has represented that Parent Group will not carry any portion of the CNOL to a prior consolidated return year of Parent Group. Parent has also represented that no member of the consolidated group of which Parent was the common parent for the tax year ending Date 1 had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period. Parent has further represented that Parent 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.

The election was required to be filed by the due date of Parent Group's tax return for the tax year ending Date 1 but for various reasons, Parent failed to file a valid election. The period of limitation on assessments under § 6501(a) has not expired for Parent Group's tax year ending Date 1 or any subsequent taxable year.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group's income tax return for the consolidated return year in which the loss arises.

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.*, § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 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 Officials, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service, that Parent failed to make the Election because, after exercising reasonable diligence (taking into account Parent's experience and the complexity of the return or issue), Parent was unaware of the necessity for the election, and that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. See §§ 301.9100-3(b)(1)(i), (iii), and (v). Parent also provided information demonstrating that it was not informed in all material respects of the required election and related tax consequences and that Parent's decision to seek relief did not involve hindsight. Section § 301.9100-3(b)(3)(ii) and (iii).

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, an extension of time is granted under § 301.9100-1, until 60 days from the date on this letter, for Parent to file the Election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ending Date 1.

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

Parent should file the election in accordance with § 1.1502-21(b)(3)(i). Parent Group's returns 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 Parent Group files its returns electronically, Parent may satisfy this latter requirement by attaching a statement to its return that provides the date and control number of this letter ruling.

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 Code or 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 § 301.9100-1, we relied on certain statements and representations made by Parent, Company Officials, and Tax Professional. However, all

essential facts should be verified. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, still 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.

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

Sincerely,

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

cc: