

**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:3  
PLR-128140-18  
Date:  
February 12, 2019

Legend

Parent =

Corp X =

Sub 1 =

Sub 2 =

Sub 3 =

Year 1 =

Year 2 =

Date 1 =

Company Officials =

Tax Professional =

Dear :

This letter responds to a letter dated September 18, 2018, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension is being requested for Parent Group, as defined below, to make an election under § 1.1502-75(a)(1) of the Income Tax Regulations to file a consolidated Federal income tax return for Year 2 (the "Election"). The material information submitted in this letter and subsequent correspondence is summarized below.

Parent is a domestic corporation which was formed in Year 1 for the purpose of acquiring a consolidated group consisting of Corp X, the common parent, and its subsidiaries, Sub 1, Sub 2, and Sub 3 ("Corp X Group"). On Date 1, Parent acquired 100% of the stock of Corp X for cash, terminating the Corp X 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 Parent Group, consisting of Parent, Corp X, Sub 1, Sub 2, and Sub 3, to file a consolidated income tax return, with Parent as the common parent, for Year 2 was due on the due date for filing Parent's Federal income tax return for Year 2. However, for various reasons, a valid Election (i.e., the filing of the consolidated return) was not made. After discovery of the missed Election, Parent submitted this request for an extension of time under § 301.9100-3 to file a valid Election. The period of limitations on assessment under § 6501(a) has not expired for Year 2 or any subsequent taxable year for Parent, Corp X, Sub 1, Sub 2, or Sub 3. Parent Group has represented that it is not attempting to alter a return position taken for which an accuracy-related penalty has been or could be imposed under § 6662.

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).

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 Group to file the Election, provided Parent 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 a valid 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. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has 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 Parent Group qualifies substantively to file a consolidated return for Year 2, an extension of time is granted under § 301.9100-3, until 30 days from the date on this letter, for Parent to file the Election. Parent Group must attach a copy of this letter to the return, or if Parent Group files its returns electronically, Parent Group may satisfy this requirement by attaching a statement to its return that provides the date on, and the control number (PLR-128140-18) of, this letter ruling.

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 the taxpayers' 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.

We express no opinion as to the tax effects or consequences of filing the Election or the return 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 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 Parent, Company Officials, and Tax Professional. 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 letter 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 the office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: