

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-105869-21

Date:
September 02, 2021

Legend

Acquiring =

Target =

Former Parent =

Date1 =

Date2 =

Company Official =

Dear :

This letter responds to a letter dated March 12, 2021, requesting, on behalf of Acquiring, an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Acquiring to file an election under §1.1502-21(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses ("CNOLs") attributable to Target and its subsidiaries ("Subsidiaries"), the portion of the carryback period for which Target and Subsidiaries were members of Former Parent's consolidated group (the "Election"). The material information submitted for consideration is summarized below.

Prior to becoming members of the Acquiring consolidated group, Target and Subsidiaries were members of the Former Parent consolidated group and were included in the consolidated federal income tax return of Former Parent. On Date1, Acquiring acquired Target and Subsidiaries. For the taxable year ending Date2, Acquiring and its includible subsidiaries (the "Acquiring Group") timely filed a consolidated federal income tax return.

Section 1.1502-21(b)(3)(ii)(B) required the Election to be filed with the Acquiring Group consolidated return for the taxable year ending Date2, but for various reasons, a valid Election was not filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Election.

It has been represented that none of the CNOLs from the Acquiring Group for the taxable year ending Date2, or any subsequent year, has been carried back, nor will be carried back, to a prior return year of any member (or predecessor) of the Acquiring Group, including a consolidated return which includes any member (or predecessor).

Section 1.1502-21(b)(3)(ii)(B) provides that if one or more members of a consolidated group become members of another consolidated group, the acquiring consolidated group may elect to relinquish, with respect to all CNOLs attributable to the member, the portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(ii)(B) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." Section 1.1502-21(b)(3)(ii)(B) provides that the statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member.

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. Section 301.9100-3 provides extensions of time for making certain elections that do not meet the requirements of §301.9100-2. 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)(ii)(B)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Acquiring to file the Election, provided Acquiring 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 Acquiring and Company Official 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 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 Acquiring has established that it acted reasonably and in good faith in failing to timely file the Election, 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 75 days from the date on this letter, for Acquiring to file the Election.

Acquiring should file the Election in accordance with §1.1502-21(b)(3)(ii)(B). The Acquiring Group's return must be amended to attach the election statement required by §1.1502-21(b)(3)(ii)(B). 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 (PLR-105869-21) of, the letter ruling.

The above extension of time is conditioned on the Acquiring 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 upon audit of the federal income tax returns involved.

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.

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,

Thomas Russell

Thomas Ian Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: