

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:2
PLR-120464-23

Date:
April 05, 2024

Legend

Agent =

Parent =

Date 1 =

Date 2 =

Company Official =

Dear :

This letter ruling responds to your authorized representatives' letter dated October 9, 2023, submitted by Agent on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations 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 (the "Election"). The material information submitted for consideration is summarized below.

For the taxable year ended Date 1, Parent was the common parent of a consolidated group (the "Parent Group") that included Parent and Agent. The Parent Group incurred a CNOL in the tax year ending Date 1 (the "CNOL"). The Election was required to be

filed with the Parent Group's income tax return for the tax year ending Date 1, but for various reasons, a valid election was not filed. On Date 2, Agent succeeded Parent as the common parent of the Parent Group.

After the date that the Election was due, it was discovered that a valid election was not filed. Subsequently, this request was submitted for an extension of time to file a valid election.

Agent has represented that the Parent Group has not carried back, and will not carry back, any portion of the CNOL to a prior consolidated return year of the Parent Group. Agent has also represented that no portion of the CNOL has been carried back, or will be carried back, to a separate return year (within the meaning of §1.1502-1(e)) of any corporation that was a member of the Parent Group at any time during the tax year ended Date 1. Agent has further represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election under section 172(b)(3) to relinquish the 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 §301.9100-3 to grant an extension of time for Agent to file the Election, provided Agent establishes 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 Agent and Company Official 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 representations made, we conclude that Agent has shown 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. Accordingly, an extension of time is granted under §301.9100-1, until 75 days from the date of this letter, for Agent to file the Election with respect to the relinquishment of the entire carryback period for the Parent Group's CNOL for the tax year ending Date 1, as described above.

The above extension of time is conditioned on the 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 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.

Agent must file the Election in accordance with §1.1502-21(b)(3)(i). The Parent Group's return for the tax year ending Date 1, having been filed consistent with a valid election having been made, must be amended to attach the election statement required by §1.1502-21(b)(3)(i). A copy of this letter must be attached to the election statement. Alternatively, if the Parent Group files its returns electronically, Agent may satisfy this latter requirement by attaching a statement to its return that provides the date on, and control number (PLR-120464-23) of, this 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 the purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Agent and Company Official. 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.

Sincerely,

Justin O. Kellar
Senior Technician Reviewer, Branch 3
(Corporate)

cc: