Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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Date:
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Legend:

P2 =

P1 =

S1 =

S2 =

L1 =

Date A =
Date B =
Date C =
Date D =
Date X =
Date E =
Date F =
W =

Company Officials &
Tax Professionals =

Authorized Representatives =

This responds to your June 7, 1999 letter, on behalf of the above taxpayers, requesting 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 by S1 (as the common parent of the S1-S2 group) for S1 and S2 to make an election to file a life-life consolidated federal income tax return, with S1 as the common parent of the S1-S2 life-life group, under Internal Revenue Code § 1504(c)(1) and § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election"), effective for their short W tax year (i.e., beginning on Date C and ending on Date D). The returns of P2, S1 and S2, for the year for which the Election is requested are presently being examined by the applicable District Director. This request has been coordinated with the District Director, pursuant to Rev. Procs. 2000-1 and 2000-2, 2000-1 I.R.B. at 4 and 73, respectively (and Rev. Procs. 99-1 and 99-2, 1999-1 I.R.B. 6 and 73, respectively). Additional information was received in a letter dated November 23, 1999. The material information is summarized below.

P2 is the common parent of a consolidated group that has a calender taxable year and uses the accrual method of accounting. P2 is a holding company and it files a life-nonlife consolidated return that includes L1, a wholly owned life insurance subsidiary, and other subsidiaries that are not relevant for purposes of this request. Prior to Date C, P1 was the common parent of a consolidated group that had a calender taxable year and used the accrual method of accounting. S1 was a wholly owned subsidiary of P1, and S2 was a wholly owned subsidiary of S1. P1 treated S1 and S2 as life insurance companies subject to tax under § 801, and included them in P1's life-nonlife consolidated return. P1 and P2 are, and have always been, unrelated to each other.

On Date B, P2 acquired S1 (including S2) from P1 for cash in a fully taxable transaction. It is represented that: (1) P's acquisition of S1, and the deemed acquisition of S2, constituted qualified stock purchases, within the meaning of § 338(d)(3); (2) P1 and P2 made § 338(h)(10) elections with respect such acquisitions; and (3) P1 and P2 treated such acquisitions as § 338(h)(10) transactions.

On Date E (which is the extended due date), P1 filed its life-nonlife return for its taxable year ending on Date D. Included in P1's return was the income from S1 and S2 for their short year ending on Date B (i.e., for the period beginning on Date A and ending on Date B), the income from the deemed sale of S1's and S2's assets and the income from the "triggering" of S1's and S2's life insurance reserves. P1 treated S1 and S2 as life insurance companies on its consolidated return.

Also on Date E (which is the extended due date), P2 filed its life-nonlife return for its taxable year ending on Date D, and S1 and S2 each filed a separate short period return for their short W tax year (i.e., for the period beginning on Date C and ending on Date D). S1's return was as a life insurance company and S2's return was as a nonlife company.

The Election was due on Date X (which is before Date E, because an extension to file a consolidated return was not filed by S1 for the S1-S2 group). However, for various reasons neither the Election nor a life-life consolidated return for S1's and S2's

short W tax year was filed. On Date F (which is after the due date for the Election and after Date E), the District Director notified P2, S1 and S2 that it reclassified S2 as a life company for its short W tax year, but that S1 and S2 could not file a life-life consolidated return for S1's and S2's short W tax year because the Election had not been timely filed. The period of limitations on assessment under § 6501(a) has not expired for P2's, S1's and S2's taxable year(s) in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

Section 1501 provides that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

Section 1504(c)(1) provides that two or more domestic insurance companies each of which is subject to tax under § 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

Section 1.1502-75(a)(1) provides that a group 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 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 filing the common parent's return.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122. Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by the group for the immediately preceding taxable year.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return year.

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 for 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.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 section 301.9100-3 will be granted when the taxpayer provides evidence to establish 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 § 301.9100-1 to grant an extension of time for S1 and S2 to file the Election, provided S1 and S2 show they 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 P2, S1, S2, Company Officials & Tax Professionals, and Authorized Representatives explain the circumstances that resulted in the failure to timely file a valid Election. The information also establishes that tax professionals were responsible for the Election, that S1 and S2 relied on them to timely make the Election, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that S1 and S2 have shown they 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 30 days from the date of issuance of this letter, for S1 and S2 to file the Election (i.e., for S1 and S2 to file a consolidated life-life return with S1 as the common parent of the group, and for S2 to attach a Form 1122) for their taxable year ending on Date D.

The above extension of time is conditioned on the taxpayers' (P2's, S1's and S2'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 District Director's office 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 the taxpayers' liability is lower. Section 301.9100-3(c).

S1 and S2 must amend their returns for their short W tax year to file a consolidated life-life return with S1 as the common parent of the group, and attach a Form 1122 for S2. See §§ 1.1502-75(a) and (b). A copy of this letter should also be attached to the returns.

We express no opinion with respect to whether: (1) S1 and S2, in fact, qualify substantively to file a consolidated return; (2) P2's acquisition of S1 (including S2) qualifies for § 338(h)(10) treatment; or (3) S1 and/or S2 qualify as life or nonlife companies for any applicable tax year. In addition, we express no opinion as to the tax consequences of filing the Election 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayers. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 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(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter is being sent to the company official and authorized representative so designated on the power of attorney on file in this office.

Sincerely yours,
Philip J. Levine
Assistant Chief Counsel (Corporate)