

## Internal Revenue Service

Department of the Treasury

Number: **200238029**  
Release Date: 9/20/2002  
Index Number: 9100.22-00, 1504.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:  
(202) 622-7550  
Refer Reply To:  
CC:CORP:B05-PLR-112172-02  
Date:  
June 17, 2002

### LEGEND

Former Parent =

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

PLR-112172-02

Subsidiary 7 =

Subsidiary 8 =

Subsidiary 9 =

Subsidiary 10 =

Subsidiary 11 =

Subsidiary 12 =

Subsidiary 13 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

PLR-112172-02

Year 2 =

Company Official =

Tax Professional =

Dear

This letter responds to your letter dated February, 19, 2002, 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 request a waiver under § 1504(a)(3)(B) of the Internal Revenue Code (the "Code") and Rev. Proc. 91-71, 1991-2 C.B. 900, with respect to the inclusion of Subsidiary 1 and its subsidiaries in Parent's Year 2 consolidated federal income tax return. Additional information was received in letters dated April 4, May 2, May 30, and June 4, 2002. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis. Parent was created as a holding company for Former Parent's affiliated group after Date 7 in Year 2, through a transaction in which the affiliated group is represented to have remained in existence. See § 1.1502-75(d). Subsidiary 1 and its wholly owned subsidiaries Subsidiary 2, Subsidiary 3, Subsidiary 4, and Subsidiary 5 were affiliated with Former Parent and were included in Former Parent's consolidated group prior to Date 4. On Date 5, certain events occurred which reduced Former Parent's stock ownership of Subsidiary 1 below 80%. Thus, beginning Date 4, Subsidiary 1 and its subsidiaries were no longer members of Former Parent's affiliated group.

After Date 4, Subsidiary 1 began to redeem its stock through open market purchases. At the close of business on Date 6, Former Parent's stock ownership of Subsidiary 1 increased above 80%. Thus, beginning Date 7, Subsidiary 1 and its subsidiaries became reaffiliated with Parent.

Subsidiary 1 acquired or formed Subsidiary 6, Subsidiary 7, Subsidiary 9, Subsidiary 10, Subsidiary 11, Subsidiary 12, and Subsidiary 13 after Date 6. Subsidiary 1 formed Subsidiary 8 between Date 4 and Date 6.

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group and such corporation ceases to be a member of such group, the corporation (and any successor of such corporation) may

PLR-112172-02

not thereafter be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61<sup>st</sup> month beginning after its first taxable year in which it ceased to be a member of the affiliated group.

Section 1504(a)(3)(B) provides that the Secretary may waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Rev. Proc. 91-71 provides procedural rules for obtaining a waiver from the application of § 1504(a)(3)(A). If certain procedural requirements are satisfied, including the filing of the statement described in § 5 of Rev. Proc. 91-71, § 3.01 of Rev. Proc. 91-71 grants a waiver for any corporation that left a consolidated group and rejoined the “same” group (i.e. the consolidated group that remained in existence within the meaning of § 1.1502-75(d)). It has been represented that the Parent affiliated group remained in existence from Year 1 through Year 2.

Parent failed to include Subsidiary 1 and its subsidiaries in its Year 2 consolidated federal income tax return. Parent failed to file the statement described in § 5 of Rev. Proc. 91-71 with such return. Pursuant to § 7 of Rev. Proc 91-71, such statement was required to be filed on or before the due date (including extensions) of the Parent Year 2 consolidated return; i.e., the statement was required to be filed on or before Date 8. Parent has therefore applied for an extension of time under § 301.9100-3 to request the waiver with respect to the inclusion of Subsidiary 1 and its subsidiaries in its Year 2 consolidated federal income tax return. The period of limitations on assessment under § 6501(a) has not expired for Parent’s consolidated group’s taxable year Year 2, the taxable year in which the waiver should have been requested, or any taxable years that would have been affected by the waiver request had it been timely filed.

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). A regulatory election includes an election for which the due date is prescribed in a revenue procedure. Section 301.9100-1(b). 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 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 requesting the waiver is fixed by Rev. Proc. 91-71. Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant

PLR-112172-02

an extension of time for Parent to request the waiver, 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 Official, and Tax Professional explain the circumstances that resulted in the failure to timely request a waiver. The information establishes that Parent relied on a qualified tax professional, that the professional failed to request, or advise Parent to request, the waiver, and that the interests of 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 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 75 days from the date on this letter, for Parent to request the waiver, by amending its consolidated returns for all relevant years to include Subsidiary 1 and its subsidiaries and by attaching the statement described in § 5 of Rev. Proc. 91-71 to the Year 2 return. A copy of this letter must also be attached.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's, Former Parent's consolidated group's and Subsidiary 1's and its subsidiaries') tax liability (if any) being not lower, in the aggregate, for all years to which the waiver applies, then it would have been if the request for waiver 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 applicable 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether Subsidiary 1, its subsidiaries, or any other corporation was a member (or not a member) of Parent's affiliated group for any time period described in this letter.

In addition, we express no opinion as to the tax consequences of filing the request for waiver 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 request for waiver 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 taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the request for waiver, penalties and interest that would otherwise be applicable, if any, continue to apply.

PLR-112172-02

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 this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

*Ken Cohen*

---

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

cc: