

Internal Revenue Service

Number: **200539007**

Release Date: 9/30/2005

Index Number: 9100.22-00, 1504.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-114185-05

Date:

June 22, 2005

Legend

Parent =

Sub # 1 =

Sub # 2 =

Sub # 3 =

Purchaser =

Partnership =

Date 1 =

Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Company Official =

Tax Professionals =

Dear

This letter responds to a letter dated February 28, 2005, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a request for an automatic waiver, pursuant to § 1504(a)(3)(B) of the Code and Rev. Proc. 2002-32, 2002-1 C.B. 959, of the application of § 1504(a)(3)(A) with respect to each of Parent, Sub # 1, and Sub # 2. The request for waiver of the application of § 1504(a)(3)(A) is hereinafter sometimes referred to as the "Election." Additional information was received in letters dated March 18, 2005, March 28, 2005, and May 10, 2005. The material information is summarized below.

Parent was organized on Date 1 and filed a separate federal income tax return with a taxable year ending December 31 of that year. For the tax year beginning Date 2, Parent was the common parent of an affiliated group that filed its initial consolidated federal income tax return (hereinafter referred to as the "Parent Group"). Sub # 1, Sub # 2 and Sub # 3 were included as members of the Parent Group and included in the Parent Group consolidated return beginning Date 2. [Sub # 3 is a domestic eligible entity described in § 301.7701-3(b) that was incorrectly included as a member of the

Parent Group beginning Date 2 rather than as disregarded as an entity separate from its owner. For purposes of this ruling, we assume, without opining, that the inclusion of Sub # 3 in the Parent group as a separate entity rather than as disregarded as an entity separate from its owner will not invalidate the consolidated return for the year beginning Date 2]. On Date 3, all of the outstanding Parent stock was acquired by Purchaser, an unrelated publicly held corporation and the common parent of an affiliated group joining in a consolidated return (hereinafter referred to as the "Purchaser Group"). The acquisition of Parent stock by Purchaser terminated the Parent Group and caused Parent Group's initial consolidated return to be a short period return from Date 2 to Date 3. Thereafter, the former members of the Parent Group were included in the Purchaser Group's consolidated return from Date 4 to Date 5, when all of the outstanding Parent stock was sold to Partnership. As a result of the purchase of Parent stock by Partnership, Parent, Sub # 1, and Sub # 2 once again became an affiliated group (hereinafter referred to as the "Restored Parent Group") and joined in filing a consolidated return for the Restored Parent Group for the short period from Date 6 (a date less than 60 months following the date the Parent Group terminated) to Date 7. This consolidated return did not include the § 1504(a)(3)(B) waiver statement required for an automatic waiver under Rev. Proc. 2002-32.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984, then with respect to periods after such cessation, such corporation (and any successor of such corporation) may not 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 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group. Section 1504(a)(3)(B) authorizes the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Section 3.01 of Rev. Proc. 2002-32 grants a waiver under § 1504(a)(3)(B) to any corporation described in section 4.01 of the revenue procedure that requests an automatic waiver by complying with the requirements of the revenue procedure, including a requirement under section 5 of the revenue procedure that a statement containing certain information be attached to the timely filed (including extensions) consolidated return for the taxable year that includes the date on which the corporation most recently became a member of the affiliated group.

The Election was due on Date 8, the due date (including extensions) of the Date 6 to Date 7 Restored Parent Group consolidated federal income tax return, but for various reasons Parent never attached the statement described in section 5 of Rev. Proc. 2002-32. However, Parent filed a consolidated return consistently with an Election having been made. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under

§ 6501(a) will not expire for Parent's, Sub # 1's, and Sub # 2's taxable years in which the reaffiliation occurred or for any years that would have been affected by the Election had it been timely filed until at least Date 9.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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 filing the Election is fixed by Rev. Proc. 2002-32. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professionals 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 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 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, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Parent to make the Election, by attaching the statement described in section 5 of Rev. Proc. 2002-32 to the Date 6 to Date 7 Restored Parent Group amended consolidated return. A copy of this letter must be attached to the Restored Parent Group amended return.

The above extension of time is conditioned on Parent's, Sub # 1's and Sub # 2'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 Parent's, Sub # 1's and Sub # 2'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. 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). 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. More specifically, no opinion is expressed as to whether the Restored Parent Group constitutes a consolidated group for Federal income tax purposes. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. 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 this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Office of Associate Chief Counsel (Corporate)