

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Telephone Number:

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PLR-110737-05

Date:

September 29, 2005

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated February 22, 2005, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to elect under § 1.1502-75(a)(1) to file a consolidated Federal income tax return with its includible subsidiaries (the "Election") for all years open for assessment under § 6501(a). The information submitted is summarized below.

Parent wholly owns Sub 1, Sub 2, Sub 3, and Sub 4. Parent, a holding company, has no business operations apart from managing its subsidiaries.

Since Year 1, Parent, Sub 1, Sub 2, Sub 3, and Sub 4 have filed Federal income tax returns on different taxable years. Parent filed using a taxable year ending on Date 1, Sub 1 filed using a taxable year ending on Date 2, Sub 2 and Sub 3 filed using a taxable year ending on Date 3, and Sub 4 filed using a taxable year ending on Date 4.

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.

For various reasons a valid Election was not filed. The period of assessment under § 6501(a) has not expired and will not expire until at least Date 5 for Parent or

any of its subsidiaries for the taxable years for which relief may be granted under this ruling request.

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 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 § 1.1502-75(a)(1) of the Income Tax Regulations. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and its subsidiaries to file the Election, provided Parent and its subsidiaries show that 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the 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 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 and its subsidiaries have shown that 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, provided that on or before Date 5 Parent and each of its includible subsidiaries amend their previously filed returns to exclude items properly includible in the Parent group's first consolidated return (see § 1.1502-76(b)), an extension of time is granted under § 301.9100-3, until Date 5, for Parent and its includible subsidiaries to file the Election by filing a consolidated return for the taxable year ending on Date 6 and attaching a Form 1122 for each of the subsidiaries.

Parent has a private letter ruling request pending with the Office of Associate Chief Counsel (Income Tax & Accounting) to retroactively change its taxable year from one ending on Date 1 to one ending on Date 3. If Parent receives permission to retroactively change its taxable year to one ending on Date 3 for Year 2 (or an earlier

year), the extension of time granted in this letter for Parent and its subsidiaries to file the Election shall be for the taxable year ending on Date 7, rather than Date 6.

The above extension of time is conditioned on Parent's and its subsidiaries' tax liability (if any) being not lower, in the aggregate, for the taxable year for which the Election applies, and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). A determination thereof will be made by the 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).

We express no opinion with respect to whether Parent and its subsidiaries qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or 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 return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3 we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still 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.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

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