

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200431002**

Release Date: 7/30/04

Index Number: 9100.20-00, 1502.75-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05 – PLR-101515-04

Date:

April 15, 2004

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Company Official =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State X =

Business M =

PLR-101515-04

Tax Professional =

Dear :

This letter responds to a letter dated December 1, 2003, 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 file an election. The extension is being requested for Parent and its subsidiaries to make an election to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as “the Election”), effective for the taxable year ending on Date 5. The material information submitted for consideration is summarized below.

Parent is a domestic corporation incorporated under the laws of State X on Date 2 as a holding company. Sub 1 was a transitory domestic corporation incorporated under the laws of State X on Date 3 solely for the purpose of participating in a transaction in which Parent acquired all the outstanding stock in Sub 2 (other than shares of Sub 2 stock already held by Parent) in a reverse subsidiary cash merger on Date 4. Sub 2 is a domestic corporation reorganized as a State X corporation in Date 1. Directly and/or through its subsidiaries, Sub 2 is engaged in Business M. Prior to the acquisition of Sub 2, Sub 2 was the common parent of its own consolidated group.

An election under § 1.1502-75(a)(1) to file a consolidated return for the taxable year that ended on Date 5 was required to be filed by the due date of Parent’s return (including extensions), but for various reasons the Election was not timely filed. The period of limitations on assessment under § 6501(a) has not expired for Parent’s or any of its subsidiaries’ taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

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.

PLR-101515-04

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 the regulations (i.e., § 1.1502-75(a)(1)). 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 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, an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Parent to file the Election. Parent must file a consolidated return for its taxable year ending on Date 5 (including its items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. With regard to Sub 2 and its subsidiaries, their items for the portion of the year not included in the consolidated return of the Parent group must be included in a consolidated return filed by the Sub 2 group). Parent must attach to its consolidated return Forms 1122 and 851, pursuant to the instructions in §§ 1.1502-75(b) and 1.1502-75T(h)(2). A copy of this letter should also be attached to the return.

PLR-101515-04

The above extension of time is conditioned on the taxpayers' (Parent's and its subsidiaries') 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 Director's office upon audit of the federal 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, in fact, 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, Tax Professional, and Company Official. 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 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.

In accordance with the Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

---

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

cc: