

## Internal Revenue Service

Department of the Treasury

Number: **200303055**

Washington, DC 20224

Release Date: 1/17/03

Index Numbers: 1502.75-00; 9100.20-00

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Refer Reply To:

CC:CORP:4 - PLR-140601-02

Date:

October 17, 2002

### LEGEND

Parent =

Subsidiary1 =

Subsidiary2 =

Subsidiary3 =

Subsidiary4 =

Subsidiary5 =

Subsidiary6 =

Subsidiary7 =

Original Parent =

Date A =

Date B =

Date C =

Date D =

Year 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated July 24, 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 file an election. The extension is being requested for Parent, Subsidiary1, Subsidiary2, Subsidiary3, Subsidiary4, Subsidiary5, Subsidiary6, and Subsidiary7 to make an election to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) (hereinafter referred to as (“the Election”), effective for the taxable year beginning on Date C and ending on Date D (“short year”). Additional information was received in letters dated September 3, 2002 and October 15, 2002. The material information is summarized below.

On Date A, (before Year 1) Parent was acquired by an unrelated limited liability company (Original Parent) which elected to be treated as an association for federal income tax purposes. As a result of the Date A acquisition, Parent was included in Original Parent’s consolidated group.

Throughout Year 1, Parent a calendar year domestic C corporation acquired, directly or indirectly, Subsidiaries1-7, all calendar year domestic C corporations, in stock-for-stock (or partial stock-for-stock) transactions. Following the acquisition of Subsidiary7 on Date B, Original Parent’s ownership of Parent fell below the 80%

required for affiliation. Thus, as of Date C, Original Parent was no longer permitted to include Parent or Parent's subsidiaries in its consolidated return.

An election under § 1.1502-75(a)(1) to file a consolidated return for the short year 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 statute of limitations on assessment under § 6501(a) has not run for Parent's or Subsidiaries1-7's taxable year for which they want to make the Election or for any taxable year that would be 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.

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 § 301.9100-1 to grant an extension of time for Parent and Subsidiaries1-7 to file the Election, provided 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 a valid Election. The information establishes that Parent and Subsidiaries1-7 reasonably relied on a qualified tax professional who failed to make, or advise them to make, the Election, the request for relief was filed before the failure to make the

Election was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiaries1-7 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 60 days from the date on this letter, for Parent and Subsidiaries1-7 to file the Election by filing a consolidated return for its short year, including Forms 851 and 1122, executed on or after the date of this letter granting an extension. A copy of this letter should be attached to the return.

The above extension of time is conditioned on the taxpayers' (Parent's and Subsidiaries1-7'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 Industry 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, in fact, Parent and Subsidiaries1-7 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 § 301.9100-1 we relied on certain statements and representations made by Parent, Tax Professional, and Company Official. However, the Industry Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 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.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

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