

Dear

This letter responds to a letter dated September 14, 2007, submitted on behalf of Corporation X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Corporation X, as successor in interest to Old Parent, is requesting an extension to file an election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the consolidated net operating loss ("CNOL") of the consolidated group of which Old Parent was the common parent for the tax year ending Date 1. Additional information was received in letters dated September 26, 2007 and November 12, 2007. The material information is summarized below.

Old Parent was the common parent of a consolidated group, consisting of Old Parent, Subsidiary 1, Subsidiary 2, and Subsidiary 3. On Date 1, Corporation X, a subsidiary of New Parent, acquired the stock of Old Parent in a transaction in which the Old Parent consolidated group terminated. Pursuant to the acquisition, Old Parent was then liquidated into Corporation X.

The Old Parent consolidated group sustained a CNOL for the tax year ending Date 1. Neither Old Parent, Subsidiary 1, nor Subsidiary 2 had a separate return year (within the meaning of §1.1502-1(e)) at any time during the carryback period. Subsidiary 3 had a separate return year during the carryback period but none of the CNOL for the tax year ending Date 1 was attributable to Subsidiary 3.

Corporation X intended to elect to waive the carryback period for the Old Parent consolidated group. The election was due on Date 2, but for various reasons, a valid election was not timely made. After the due date for the Election, it was discovered that the Election had not been made. Notwithstanding the lack of a timely filed election, Old Parent's consolidated group's tax return was filed consistently with a valid election having been made. After Date 2, 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) has not expired for Old Parent's consolidated group's taxable year for which Corporation X desires to make the Election or for any taxable years that would be affected by the Election.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER §1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON

PARENT.” The statement must be filed with the group's income tax return for the consolidated return year in which the CNOL arises.

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.*, § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Corporation X to file the Election, provided Corporation X 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 Corporation X, New Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Corporation X reasonably relied on a qualified tax professional who failed to make, or advise Corporation X 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 Corporation X 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 § 301.9100-3, until 45 days from the date on this letter, for Corporation X to file the Election with respect to the waiver of the carryback period for the Old Parent consolidated group.

The above extension of time is conditioned on Old Parent's consolidated group'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 Old Parent's

consolidated group's tax liability for the years involved. 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' tax liability is lower. Section 301.9100-3(c).

Old Parent's return, having been filed consistently with a valid election having been made, should be amended by attaching a copy of this letter to its return. Alternatively, if Old Parent's returns are filed electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of the letter ruling.

No opinion is expressed as to the tax effects or consequences of filing 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 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 Corporation X, New 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.

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