

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:

, ID No.

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CC:CORP:B04

PLR-132149-12

Date:

January 22, 2013

Legend

Parent =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated July 25, 2012, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent to file an election under § 1.1502-47(l)(3)(iii) to relinquish the entire carryback period for the consolidated loss from operations (the “consolidated LO”) of the life subgroup of the Parent consolidated group arising in the taxable year ending Date 1

(the “Election”). Additional information was submitted in letters dated October 1 and October 31, 2012. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations (the “Parent Group”) that includes both life insurance companies (“life companies” comprising the “Life Subgroup”) and corporations other than life insurance companies (“nonlife companies”). Parent files a “life-nonlife” consolidated federal income tax return pursuant to § 1504(c)(2) of the Internal Revenue Code and § 1.1502-47 of the Income Tax Regulations.

The Life Subgroup of the Parent Group incurred a consolidated LO under § 1.1502-47(l)(3)(iii) for the taxable year ending Date 1. Parent has represented that the Parent Group has not, and will not, carry back any portion of the consolidated LO for the taxable year ended Date 1 to a prior consolidated return year of the Parent Group. Parent has also represented that no corporation that was a member of the Life Subgroup at any time during the taxable year ending Date 1 had a separate return year, within the meaning of § 1.1502-1(e), at any time during the 3-year carryback period provided by § 810(b)(1)(A). In addition, Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief and the new return position requires or permits a regulatory election for which relief is requested.

The Election was due on Date 2, but for various reasons a valid election was not filed. 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) has not expired for the Parent Group’s consolidated income tax return for the taxable year in which the Election should have been filed or for any subsequent taxable year.

Section 810(c) generally defines the term “loss from operations” as the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

Section 810(a) provides that there shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the operations loss carryovers to such year, plus (2) the operations loss carrybacks to such year. For purposes of Part I of Subchapter L (§§ 801 through 818, addressing the taxation of life insurance companies), the term “operations loss deduction” means the deduction allowed by § 810(a).

Section 810(b)(1) provides that the loss from operations for any taxable year (referred to as the “loss year”) shall be (A) an operations loss carryback to each of the 3 taxable years preceding the loss year, (B) an operations loss carryover to each of the

15 taxable years following the loss year, and (C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in § 810(b)(1)(B).

Section 810(b)(3) provides that, in the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Section 1504(c)(2)(A) provides that if an affiliated group (determined without regard to § 1504(b)(2) includes one or more domestic insurance companies taxed under § 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying § 1504(a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

Section 1.1502-47 implements the provisions of §§ 1502, 1503(c), and 1504(c)(2), and establishes a subgroup method to determine the consolidated taxable income for a life-nonlife consolidated group. Under the subgroup method, the taxpayer first computes “nonlife consolidated taxable income” of the nonlife companies and “consolidated partial life insurance company taxable income” of the life companies. At that point, § 1.1502-47(g) provides that the consolidated group’s consolidated taxable income is computed on a group basis as the sum of each subgroup’s income as offset by losses of the other subgroup (as allowable under § 1503(c) and § 1.1502-47).

Section 1.1502-47(l)(3)(i) sets forth the general rule that the consolidated operations loss deduction is an amount equal to the consolidated operations loss carryovers and carrybacks to the taxable year. The provisions of §§ 1.1502-21 or 1.1502-21(A) (as appropriate) and § 810 apply to the extent not inconsistent with § 1.1502-47(l)(3).

Section 1.1502-47(l)(3)(iii) provides that a consolidated LO is first carried back to be absorbed by the gain from operations of a life member and that the election to relinquish the entire carryback period for the consolidated LO of the life subgroup may be made by the common parent of the group. Furthermore, the election may be made even though the election under § 172(b)(3) and § 1.1502-47(h)(2)(iii) of this section is not made.

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 loss 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. Section 9100-3 provides extensions of time for making certain elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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 regulations (*i.e.*, §§ 1.1502-47(l)(3)(i) and 1.1502-47(l)(3)(iii), incorporating the rules prescribed under § 1.1502-21 (including the specific rules under § 1.1502-21(b)(3)(i)) to the extent not inconsistent with § 1.1502-47(l)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent 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 interest 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 reasonably relied

upon a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has established that it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its consolidated group) 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 upon audit of the income tax returns involved.

Parent should file the election in accordance with §§ 1.1502-47(l)(3)(i) and 1.1502-47(l)(3)(iii), which incorporate the rules prescribed under § 1.1502-21 (including the specific rules under § 1.1502-21(b)(3)(i) to the extent not inconsistent with § 1.1502-47(l)(3)). The Parent Group's returns must be amended to attach the election statement required by the regulations. A copy of this letter should be attached to the election statement. Alternatively, if the Parent Group files its returns electronically, Parent may satisfy this latter requirement by attaching a statement to its return that provides the date and control number of this letter ruling.

We express no opinion 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 § 301.9100-1, we relied on certain statements and representations made by Parent, Company Official, Tax Professional, and other parties under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that otherwise would be applicable, if any, still apply.

This ruling 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 with 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: