

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

**CC:DOM:CORP:2-PLR-117893-99**

Date:

**March 03, 2000**

Foreign Parent =

Parent =

Sub 1 =

Sub 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

State =

Business 2 =

Business 3 =

Company Official 1 =

Tax Preparation Professional =

Tax Compliance Manager =

This responds to a letter from your authorized representative requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.1502-75 (a)(1) of the Income Tax regulations (hereinafter referred to as "the Election"). The extension is being requested for Parent, Sub 1, and Sub 2 to make an election to file a consolidated federal income tax return, with Parent as the common parent, effective for their taxable year ended on Date 1. The material information submitted is summarized below.

Parent was formed as a State corporation on Date 2 by Foreign Parent which owns all of its stock. Foreign Parent does not file income tax returns in the United States.

Before Date 3, Sub 1, a State corporation formed in Year 1, was wholly owned by Foreign Parent. Prior to Date 3, Sub 1 did not have any assets, revenue or expense and did not file any tax returns. On Date 3, Foreign Parent transferred all of its shares of stock in Sub 1 to Parent in exchange for cash. Parent has represented that this transaction was not a reverse acquisition as described in § 1.1502-75(d)(3) of the regulations. Sub 1 is now engaged in Business 3.

Parent formed Sub 2 on Date 4, in accordance with the laws of State. Sub 2 is engaged in Business 2. Parent is a holding company for Sub 1 and Sub 2, receiving management fees from them but conducting no other operations.

Parent, Sub 1, and Sub 2 intended to file the Election with Parent as the common parent of the group beginning with the taxable year that ended on Date 1. Tax Preparation Professional was engaged to prepare the consolidated return for Parent, Sub 1, and Sub 2. The Election was due on Date 5, but for various reasons the Election was not filed.

On Date 6, (which is after the due date for the Election), Tax Compliance Manager discovered that Tax Preparation Professional failed to file either the consolidated return or an extension of time to file the return for Parent, Sub 1 and Sub 2.

Sub 1 received a notice from the Internal Revenue Service dated Date 7 requesting an income tax return for the tax year ending Date 1. Sub 1 forwarded the notice to Tax Preparation Professional. On Date 8, Parent, Sub 1, and Sub 2 were notified of Tax Preparation Professional's failure to file either a timely consolidated return or an extension of time to file a return. The statute of limitations on assessment under § 6501(a) has not run for Parent's, Sub 1's, or Sub 2's taxable year for which they want to make the Election or for any taxable year that would be affected by the Election.

Section 1501 of the Internal Revenue Code provides that an affiliated group of corporations has the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

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.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return if it files a Form 1122. Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by the group for the immediately preceding taxable year.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for purposes not relevant here) shall be duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year.

Under §§ 301.9100-1 and 301.9100-3, the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that a regulatory election means an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 301.9100-3 provide that requests for extensions of time to file elections will be granted when the taxpayer(s) provides evidence (including

the affidavits described in § 301.9100-3(e)) establishing that the taxpayer(s) acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, the Election was required by §§ 1.1502-75(a)(1), 1.1502-75(b) and 1.1502-75(h) to be filed on or before Date 5. However, for various reasons a valid Election was not timely filed. Subsequently, Parent filed this request, under § 301.9100-1, for an extension of time to file the Election. Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent, Sub 1, and Sub 2 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 1, Tax Compliance Manager, and Tax Preparation Professional explain the circumstances that resulted in the failure to file the Election. The information also establishes that tax professionals were responsible for the Election and Parent, Sub 1, and Sub 2 relied on them to timely make the Election, and granting an extension will not prejudice the interests of the government.

Based on the facts and information submitted, including the representations made, we conclude that the taxpayers have shown they acted reasonably and in good faith in failing to timely file the Election, the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent, Sub 1, and Sub 2 to file the Election (i.e., file a consolidated return, with Parent as the common parent, and attach a Form 1122 for each of Sub 1 and Sub 2) for their taxable year ended on Date 1.

The above extension of time is conditioned on the taxpayers' (Parent's, Sub 1's, and Sub 2's) tax liability 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 filed (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 District Director's office upon audit or examination 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).

Parent must file a consolidated return for its taxable year ended on Date 1 and attach thereto the Election (a Form 1122, executed on or after the date of this letter granting an extension, for each of Sub 1 and Sub 2), pursuant to the instructions in § 1.1502-75(b). A copy of this letter should also be attached. Additionally, a consolidated return must be filed for succeeding years.

We express no opinion: (1) as to whether Parent, Sub 1, and Sub 2 qualify substantively to file a consolidated return; and (2), as to Parent's acquisition of Sub 1. 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 and 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 the taxpayers, the Tax Compliance Manager, and the taxpayers' Authorized Representatives and employee(s). However, the District 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 (e.g., there will likely be penalties and interest because late returns are being filed).

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,  
Philip J. Levine  
Assistant Chief Counsel (Corporate)