

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1-PLR-107745-00

Date:

August 4, 2000

Legend:

LLP =

P1 =

S1 =

P2 =

Date A =

Date C =

Date D =

Date E =

W =

Company Official =

Authorized Representatives =

This letter responds to a letter dated April 4, 2000, on behalf of the above taxpayers, 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 by P1, as the common parent, for P1 and subsidiaries to make an election to file a consolidated federal income tax return, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election"), effective for their W tax year (ending on Date C). The returns of P1, P2, and their subsidiaries, for the year for which

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the Election is requested have not been, and are not presently being, examined by the applicable District Director. Additional information was received in a letter dated June 6, 2000. The material information is summarized below.

Shortly prior to Date A, LLP, a partnership, formed P1, and P1 immediately thereafter formed a subsidiary, S1. On Date A, S1 merged into P2 with P2 shareholders receiving solely cash and P1 acquiring 100 percent of the stock of P2. For federal tax purposes, the transaction was treated as a fully taxable stock acquisition. Prior to Date A, P1 and P2 were unrelated to each other.

Prior to Date A, P2 was the common parent of a consolidated group that had a January 31 taxable year. As a result of the merger the P2 group terminated and the former members of the P2 group became members of the P1 affiliated group.

The due date for the first consolidated return for the P1 group was Date D. For various reasons the Election for the P1 group was not timely filed. The period of limitations on assessment under § 6501(a) has not expired for P1's, P2's, and their subsidiaries' taxable year(s) in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

Section 1501 provides that an affiliated group of corporations shall have 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 shall be 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

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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.

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.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 the P1 group to file the Election, provided P1 shows 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.

Information, affidavits, and representations submitted by P1, P2, Company Official, and Authorized Representatives explain the circumstances that resulted in the failure to timely file a valid Election. The information also establishes that tax professionals were responsible for the Election, that P1 relied on them to timely 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 P1 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 § 301.9100-1, until 30 days from the date of issuance of this letter, for P1 to file the Election (*i.e.*, for P1 to file a consolidated return with P1 as the common parent of the group) for the taxable year ending on Date C.

The above extension of time is conditioned on the taxpayers' (P1's, P2's, and 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

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taxpayers' tax liability for the years involved. A determination thereof will be made by the District 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).

P1 and its subsidiaries must file a consolidated return with P1 as the common parent of the group for the W tax year, and attach Form 1122 for each subsidiary. See §§ 1.1502-75(a) and (b). A copy of this letter should also be attached to the return.

We express no opinion with respect to whether: (i) P1 and its subsidiaries, in fact, qualify substantively to file a consolidated return; or (ii) as to the proper treatment of the acquisition of P2 (and its subsidiaries) by P1. In addition, we express no opinion as to the tax 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. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to 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.

A copy of this letter is being sent to the authorized representative as designated on the power of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Ken Cohen
Acting Chief, Branch 3