

Internal Revenue Service

Department of the Treasury

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Date:
October 22, 2001

LEGEND:

Parent =

Subsidiaries =

Foreign Parent =

Company Officer =

Tax Professional =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

We respond to a letter dated August 24, 2001, 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 and Subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (Election), effective for their taxable year ending on Date 1. Additional information was received in a letter dated October 12, 2001. The material information submitted for consideration is summarized below.

Parent and Subsidiaries are domestic corporations with tax years ending on January 31 and who use the accrual method of accounting. On Date 2, Foreign Parent formed Parent to hold its interest in Subsidiaries. Parent issued its stock to Foreign

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Parent in exchange for all of the stock of Subsidiaries.

The Election was due on Date 3, but for various reasons the Election was not timely filed. On or about Date 4 (after the due date for the Election), Company Officer and Tax Professional discovered that the Election was not timely filed. The statute of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for Parent's or Subsidiaries' taxable year for which they want to make the Election or for any taxable year that would be affected by the Election.

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 (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. If a group wishes to exercise its privilege in filing a consolidated return, it 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 under all subtitles of the 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 (§ 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 (§ 301.9100-3(a)).

In this case, the time for filing the Election is fixed by the regulations (§ 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and Subsidiaries to file the Election, provided Parent and Subsidiaries 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 Officer, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that Parent and Subsidiaries relied on qualified tax professionals, that the tax professionals failed to make, or advise Parent and Subsidiaries to make, the Election, and that the government will not be prejudiced if relief is granted (§ 301.9100-3(b)(1)(v)).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiaries have shown they acted reasonably

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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 45 days from the date on this letter, for Parent to file the Election (by filing a consolidated return for the year ending on Date 1). A copy of this letter should be attached to the return.

The above extension of time is conditioned on the taxpayers' (Parent'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 taxpayer's tax liability for the year's 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' liability is lower (§ 301.9100-3(c)).

We express no opinion with respect to whether Parent and Subsidiaries 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, Company Officer, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension to file the Election is granted under § 301.9100-1, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer(s) 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, copies of this letter are being sent to your authorized representatives.

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