

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4-PLR-149964-02

Date:

October 17, 2002

LEGEND

Original Parent =

Parent =

Subsidiary1 =

Subsidiary2 =

Subsidiary3 =

Subsidiary4 =

Subsidiary5 =

Subsidiary6 =

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Subsidiary7 =

Date A =

Date B =

Date C =

Year 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated September 3, 2002, submitted on behalf of Original Parent and 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 Original Parent, Parent, Subsidiary1, Subsidiary2, Subsidiary3, Subsidiary4, Subsidiary5, and Subsidiary6 to make a ratable allocation election ("the Election") under § 1.1502-76(b)(2)(ii) of the Income Tax Regulations. Additional information was received in a letter dated October 15, 2002.

On Date A (before Year 1), Parent was acquired by an unrelated limited liability company (Original Parent) which elected to be treated as an association for federal income tax purposes. Parent is a calendar year domestic C corporation. As a result of the Date A acquisition, Parent was included in Original Parent's consolidated group.

Throughout Year 1, Parent acquired, directly or indirectly, Subsidiaries1-7 in stock-for-stock (or partial stock-for-stock) transactions. Each acquired entity had a calendar year tax year. After each acquisition the acquired entities' books were closed and short year returns were filed. The ratable allocation method was not chosen for any of the acquired entities for the period prior to the acquisition. All of the acquired entities were stand alone corporations except Subsidiaries3-6 which were all members of a consolidated group with Subsidiary3 as the common parent. The Election being requested will apply from the beginning of the day after the acquisition for Subsidiaries1-6.

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Following the acquisition of Subsidiary7 on Date B, Original Parent's ownership of Parent fell below the 80% required for affiliation, and Original Parent and Parent became disaffiliated. Thus, as of Date C, Original Parent was no longer permitted to include Parent or Parent's subsidiaries in its consolidated return. Accordingly, Subsidiary7 did not become a member of Original Parent's consolidated group. The Election being requested will apply from the beginning of Year 1 for Parent.

An election under § 1502-76(b)(2)(ii) to apply the ratable allocation method to the corporation's items (other than certain "extraordinary items") was required to be filed by the due date of Parent's return (including extensions), but for various reasons the Election was not timely filed. Subsequently, this request was submitted, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Original Parent's or Parent's consolidated group's taxable years ending and beginning in Year 1, the taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Under § 1.1502-76(b)(1)(i), a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If the consolidated return includes the items of a corporation for only a portion of its tax year, items for the portion of the year not included in the consolidated return must be included in a separate return (including the consolidated return of another group).

Under § 1.1502-76(b)(1)(ii), if a corporation becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Under § 1.1502-76(b)(2)(i), the returns for the years that end and begin with the corporation becoming (or ceasing to be) a member are separate tax years for all Federal income tax purposes. The returns are subject to the rules of the Internal Revenue Code applicable to short periods, as if the corporation ceased to exist on becoming a member (or first existed on becoming a member).

In lieu of the general rule of § 1.1502-76(b)(2)(i) requiring a closing of the books, § 1.1502-76(b)(2)(ii) provides that, if the corporation is not required to change its annual accounting period or its method of accounting as a result of its change in status, and an irrevocable election is made under § 1.1502-76(b)(2)(ii)(D), the corporation's items (other than certain "extraordinary items") may be ratably allocated between the periods. If this election is made, an equal portion of the corporation's items are allocated to each day of the corporation's original year (the tax year determined without taking § 1.1502-76 into account), except that extraordinary items must be allocated to the day that they

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are actually taken into account. Under § 1.1502-76(b)(2)(ii)(D), the election to ratably allocate the corporation's items is made in a separate statement filed with the returns including the items for the years ending and beginning with the corporation's change in status.

Section 1.1502-76(b)(2)(ii)(B)(3) provides that if § 1.1502-76(b) applies more than once with respect to an original year, adjustments must be made in accordance with the principles of § 1.1502-76(b).

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., § 1.1502-76(b)(2)(ii)(D)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Original Parent, Parent, and Subsidiaries1-6 to file the Election, provided that 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 Original Parent, Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Original Parent, Parent, and Subsidiaries1-6 reasonably relied on a qualified tax professional who failed to make, or advise them 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 Original Parent, Parent, and Subsidiaries1-6 have shown 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. Accordingly, an extension of time is granted under § 301.9100-1 until 60 days from the date on this letter, for Original Parent, Parent, and Subsidiaries1-6 to file the Election by

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filing all returns required to report Original Parent's, Parent's, and Subsidiaries' 1-6 items in accordance with the Election and by attaching the statement described in § 1.1502-76(b)(2)(ii)(D) to each return. A copy of this letter should also be attached to each return.

No opinion is expressed as to the tax treatment of this case under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the above stated facts that are not directly covered by the above rulings. For purposes of granting relief under section 301.9100-1, we relied on certain statements and representations made by the taxpayer, its employees and representatives. However, the Industry Director should verify all essential facts. In addition, notwithstanding that an extension is granted under section 301.9100-1 to file the Election, penalties and interests that would otherwise be applicable, if any, continue to apply.

Parent must provide Original Parent with a copy of this letter.

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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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