

## Internal Revenue Service

## Department of the Treasury

Number: **200312013**

Washington, DC 20224

Release Date: 3/21/2003

Index Number: 9100.20-00, 1502.75-00

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:CORP:B03-PLR-140748-02**

Date:

**December 17, 2002**

### Legend

New Parent =

Old Parent =

Sub =

Investor =

State X =

M =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Tax Professional 1 =

Company Officer 1 =

Tax Professional 2 =

Company Officer 2 =

Dear :

We respond to your letter dated July 17, 2002, submitted on behalf of New 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 New Parent and Sub to make an election to file a consolidated Federal income tax return, with New 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 and with letters dated August 22, October 10, November 11 and 20, and December 5, 2002. The material information submitted for consideration is summarized below.

The facts as submitted indicate that Old Parent was the common parent of an affiliated group filing separate tax returns. Sub was Old Parent's only subsidiary. Investor wanted to invest in the business of Old Parent, but because of State X law, Investor could not do so directly. Accordingly, the following transaction took place. On Date 2, M, as nominee of Old Parent, purchased all of the stock of New Parent. On Date 3, Old Parent merged into New Parent. On Date 4, Investor purchased a portion of the stock of New Parent acquired by the Old Parent shareholders in the merger and purchased some newly issued New Parent stock directly from New Parent.

New Parent and Sub intended to file a consolidated return for the period ending Date 1. The Election was due on Date 5, but for various reasons, a valid election was not filed. On Date 6 (after the due date for the Election), Tax Professional 1 and

Company Officer 1 discovered that the Election was not timely made. The statute of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for New Parent's or Sub's 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 of 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.

Pursuant to § 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. 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 (§ 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for New Parent and Sub to file the Election, provided New Parent and Sub 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 New Parent, Company Officer 2, and Tax Professional 2 explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that New Parent and Sub relied on qualified tax professionals, that the tax professionals failed to make, or advise New Parent and Sub to make, the Election, and that the government will not be prejudiced if relief is granted. Section 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that New Parent and Sub have shown they acted reasonably and in good faith, the requirements of § 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted

under § 301.9100-3, until 45 days from the date on this letter, for New 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' (New Parent's and Sub's) 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 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. Section 301.9100-3(c).

We express no opinion with respect to whether New Parent and Sub 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 § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension to file the Election is granted under § 301.9100-3, 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, a copy of this letter is being sent to New Parent.

Sincerely,

*Ken Cohen*

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