

Internal Revenue Service

Department of the Treasury

Number: **200312015**

Washington, DC 20224

Release Date: 3/21/2003

Index Number: 9100.22-00 1502.76-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B05-PLR-154614-02

Date:

December 17, 2002

Legend

Taxpayer =

Parent =

Date 1 =

Date 2 =

Company Official =

Dear :

This letter responds to a letter dated October 3, 2002, submitted on behalf of Taxpayer, and subsequently joined in by 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 Taxpayer and Parent to make a ratable allocation election (the "Election") under §1.1502-76(b)(2)(ii) of the Income Tax Regulations. Additional information was received by letter dated November 13, 2002. The material information submitted for consideration is summarized below.

On Date 1, Parent was acquired by Taxpayer. Taxpayer is a calendar year domestic C corporation and the common parent of a consolidated group that files a consolidated Federal income tax return. Parent was a calendar year domestic C corporation and the common parent of a consolidated group that filed a consolidated Federal income tax return.

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Taxpayer and Parent maintain their books on the accrual method. As a result of the Date 1 acquisition, Parent was included in Taxpayer's consolidated group.

Taxpayer intended to file an election under § 1.1502-76(b)(2)(ii) to apply the ratable allocation method on its tax return for the tax year ending on Date 2 regarding the activity of Parent and Parent's subsidiaries. The election was to be filed with Taxpayer's return for the tax year ending on Date 2, but for various reasons the Election was not timely filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

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 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.

Pursuant to § 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

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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 § 301.9100-3 to grant an extension of time for Taxpayer and Parent 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 Taxpayer, Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that a tax professional was responsible for the election, that Taxpayer and Parent relied on the tax professional 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 Taxpayer and Parent 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 Taxpayer and Parent to file the Election by filing all returns required to report Taxpayer and Parent's 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.

The above extension of time is conditioned on the Taxpayer's consolidated group's and Parent's consolidated group's tax liability, if any, not being lower, in the aggregate for all years to which the election applies, than it would have been if the election had been made timely (taking into account the time value of money). No opinion is expressed as to the Taxpayer's consolidated group's or Parent's consolidated group's tax liability for the years involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the Taxpayer's consolidated group's or Parent's consolidated group's tax liability is lower. Section 301.9100-3(c).

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No opinion is expressed 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 resulting from, filing 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 taxpayer and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the election, penalties and interest that would otherwise be applicable, if any, continue to apply. A copy of this letter must be attached to any income tax return to which it is relevant.

Taxpayer must provide 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

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