

Internal Revenue Service

Department of the Treasury

Number: **200333015**

Washington, DC 20224

Release Date: 8/15/2003

Index Number: 9100.20-00, 1502.75-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B03-PLR-105352-03

Date:

May 2, 2003

Legend:

Parent =

Foreign Company =

Subsidiary =

Foreign Grandparent =

Foreign Sub 1 =

Foreign Sub 2 =

State A =

Year 1 =

Year 2 =

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Date 1 =

Date 2 =

Date 3 =

Tax Professional =

Company Official =

Dear :

We respond to a letter dated January 16, 2003, submitted on behalf of 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 Parent and Subsidiary 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 2. Additional information was received in and with letters dated March 6 and April 11, 2003. The material information submitted for consideration is summarized below.

In order to assist in the financing of a U.S. acquisition by Foreign Grandparent, Parent was formed in Year 1 by two wholly-owned subsidiaries (Foreign Sub 1 and Foreign Sub 2) of Foreign Grandparent as a State A general partnership. With the filing on Date 3 of Form 8832, Entity Classification Election, Parent elected under the "check-the-box" ("CTB") regulations of § 301.7701-3 to be treated as a corporation for U.S. tax purposes effective on Date 1. Parent formed Foreign Company, a unlimited liability company disregarded as an entity separate from its single owner, Parent, for Federal tax purposes. Foreign Company formed Subsidiary, a State A corporation, becoming its 100% owner. Parent is a calendar year taxpayer.

For various reasons, the Election was never filed for Year 1 or Year 2. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The statute of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for Parent's or Subsidiary'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

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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.

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 (§ 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Subsidiary to file the Election, provided Parent 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent 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 Parent has shown that 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 § 301.9100-3, 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 2, including Form 1122, Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return). A copy of this letter should be attached to the return. If the Parent group elects to file a consolidated return for Year 1, then, pursuant to § 1.1502-75(a)(2), the Parent group will be required to file a consolidated return for all subsequent taxable years in which the group continues to exist, unless it has an election to discontinue filing consolidated returns under § 1.1502-75(c).

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The above extension of time is conditioned on the taxpayers' (Parent's and Subsidiary'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 Parent and Subsidiary qualify substantively to file a consolidated return or whether Foreign Company may properly be disregarded as an entity separate from its single owner for Federal tax purposes. 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 Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension to file the Election is granted under § 301.9100-3, 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 your authorized representative.

Sincerely,

Ken Cohen

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

cc: