

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person To Contact:

Telephone Number:

In Re:

Refer Reply To:

CC:CORP:2 – PLR-131922-03

Date:

September 25, 2003

### Legend

Parent =

Subsidiary =

State X =

State Y =

Tax Year =

Date 1 =

Date 2 =

Date 3 =

Company Officials =

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Tax Professional =

Dear

This letter responds to a letter submitted on behalf of Parent and Subsidiary, dated May 14, 2003, requesting an extension of time, under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is requested in order to allow Parent and Subsidiary to elect to file a consolidated federal income tax return (the "Election"), with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations for Tax Year. Additional information was submitted in letters dated July 1, 2003, August 12, 2003, and September 3, 2003. The information submitted is summarized below.

Parent, a State X limited partnership that has elected to be treated as an association taxable as a corporation for Federal tax purposes, was formed on Date 1. Subsidiary, a State Y corporation, was formed on Date 2. Parent owns 100 percent of the stock of Subsidiary and the Parent-Subsidiary group constitute an affiliated group of corporations within the meaning of § 1504(a) of the Internal Revenue Code (the "Code").

Parent and Subsidiary intended to file a consolidated Federal income tax return. The Election was due on Date 3, but for various reasons a valid election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's or Subsidiary's 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.

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Section 1501 of the Code provides, in part, that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group, consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

Section 1.1502-75(a) of the regulations provides, in part, that if a group wishes to exercise its privilege of filing a consolidated return, such return must be filed no later than the last day prescribed by law (including extensions of time) for the filing of a common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory or 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).

The time for electing to file a consolidated return is fixed by the regulations (i.e., § 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 make the Election, provided Parent and Subsidiary 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 Officials, and Tax Professional explain the circumstances that resulted in the failure to timely make the Election. The information establishes that Parent and Subsidiary reasonably relied on a qualified tax professional who failed to make, or advise Parent and Subsidiary to make, the Election, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

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Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiary 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 § 301.9100-3, until 30 days from the date on this letter, for Parent and Subsidiary to make the Election for Tax Year.

The above extension of time is conditioned on Parent's and Subsidiary'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 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 applicable 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' tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax 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 taxpayers under penalties of perjury. However, the Director should verify all essential facts. 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent.

Sincerely,

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

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cc: