

PLR-116035-03

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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CC:CORP:B01 – PLR-116035-03

Date:

September 30, 2003

Legend

Taxpayer2 =

Tax Year1 =

Month =

Tax Professional =

Dear

This letter responds to a letter dated March 7, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The request for extension of time concerns an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback period for the consolidated net operating loss (CNOL) of the consolidated group of which Taxpayer2 is the common parent for Tax Year1. Additional information was submitted in letters dated May 16 and July 2, 2003.

The material information submitted for consideration is summarized below.

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Taxpayer2, the common parent of a consolidated group of corporations, uses an accrual method of accounting on a calendar year basis. Taxpayer2 intended to relinquish the entire carryback period for its consolidated group's CNOL on its return for Tax Year1. The election was to be filed with the group's return for Tax Year1. However, for various reasons a valid election was not timely filed. In Month (which is after the due date for the consolidated return for Tax Year1), it was discovered that a valid election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year(s). Taxpayer2 has represented that none of the CNOL for the Taxpayer2 group for Tax Year1 was attributable to a corporation that filed (or was required to file) a separate return (including a consolidated return of a different consolidated group) at any time during the carryback period.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may elect to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) provides that the statement must be signed by the common parent and filed with the group's income tax return for the consolidated return year in which the CNOL arises.

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 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. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. 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., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer2 to file the election, provided Taxpayer2 establishes it acted reasonably and in good faith, the requirements of

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§ 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 Taxpayer2 and Tax Professional explain the circumstances that resulted in the failure to timely file the valid election. The information establishes that Taxpayer2 reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer2 to make, the election, and that the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v), - 3(c).

Based on the facts and information submitted, including the representations that have been made, we conclude that Taxpayer2 has established it acted reasonably and in good faith in failing to timely file the election, the requirements of § 301.9100-1 and § 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for filing the election with respect to the relinquishment of the entire carryback period for the CNOL for Tax Year1, as described above.

The election should be made by filing the statement described in § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement.

The above extension of time is conditioned on the Taxpayer2 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 Taxpayer2 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 Taxpayer2 group's liability is lower. Section 301.9100-3(c).

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 Taxpayer2 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.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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Pursuant to a 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 Office of Associate Chief Counsel

(Corporate