

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-111373-05

Date:

August 26, 2005

Taxpayer =

Company =

Acquiror 1 =

Acquiror 2 =

Date 1 =

Date 2 =

Date 3 =

Outside Tax Firm =

Tax Professional A =

Tax Professional B =

Dear \_\_\_\_\_ :

This letter responds to a letter dated February 25, 2005, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.1502-31T(b) to apply § 1.1502-31T(a) to the determination of Taxpayer's tax basis in its shares of Company stock immediately after Taxpayer's formation. Additional information was submitted in letters dated June 6 and July 26, 2005. The material information submitted for consideration is summarized below. All references in this letter to § 1.1502-31T refers to the regulations in existence for the year at issue.

On Date 1, Taxpayer was formed as a holding company of Company. All of the common stock of Company was contributed to Company in a transaction qualifying under § 351(a) of the Code. On Date 2, Acquiror 1 acquired the stock of Taxpayer for cash in a taxable merger. On Date 3, Acquiror 2 acquired Taxpayer from Acquiror 1 in a taxable stock purchase. No § 338 election was made for either the Date 2 or Date 3 transaction.

Former § 1.1502-31T(a) provided for a basis adjustment in the stock of a subsidiary following certain changes in structure of a consolidated group. The rules apply to all qualifying transactions occurring after September 7, 1988. Former § 1.1502-31T(b) provided that a group may elect retroactive application of the rule for changes in structure that occurred prior to September 7, 1988; and, that such election is made by attaching an "election statement" to the group's return for the taxable year that includes September 7, 1988.

In this case, since the change in structure occurred prior to September 8, 1988, Taxpayer was required to make the election allowed under § 1.1502-31T(b) on its 1988 federal tax return in order to apply the net asset basis rule under § 1.1502-31T(a) to determine its basis in the shares of Company stock. However, 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 a valid election.

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. 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.*, § 1.1502-31T(b)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the election, provided Taxpayer establishes 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 Taxpayer, Tax Professional A and Tax Professional B explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that the request for relief was filed before the failure to make the election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations that have been made, we conclude that Taxpayer 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 Taxpayer to file an election under § 1.1502-31T(b) with respect to the above described transaction. A copy of this letter should be attached to the election.

The above extension of time is conditioned on Taxpayer's consolidated group's tax liability, or any other 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 Federal income tax effect, if any, if it is determined that any consolidated group's tax 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 the taxpayer and its representatives. However, all 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.

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.

Pursuant to a power of attorney on file in the office, a copy of this letter is being sent to your authorized representatives

Sincerely,

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

cc: