

## 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:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-124011-05

Date:

August 31, 2005

TY:

Legend

Taxpayer =

Group A =

Group B =

Group C =

Group D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 2 =

Company Official 1 =

Company Official 2 =

Dear :

This letter responds to a letter dated April 21, 2005, requesting, on behalf of Taxpayer, 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 § 1.1502-21(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 Taxpayer was the common parent for the Year 2 tax year ("Taxpayer Group"). Additional information was submitted in letters dated July 12 and August 25, 2005. The material information submitted for consideration is summarized below. All references in this letter to § 1.1502-21 refer to the regulation in existence for the year at issue.

On Date 1, the Taxpayer Group acquired Group A. On Date 2, the Taxpayer Group acquired Group B. On Date 3, the Taxpayer Group acquired Group C. On Date 4, the Taxpayer Group acquired Group D. For its Year 2 tax year, the Taxpayer Group sustained a CNOL. Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for its Year 2 tax year. The return was timely filed, consistent with a valid election having been made. However, for various reasons, a valid election was not filed. On Date 5, it was discovered that 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. 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.

Section 1.1502-21(b)(3)(i) provided, for the year at issue, that a consolidated group may make an irrevocable election under § 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is 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." The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises and must be signed by the common parent.

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.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 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, Company Official 1, and Company Official 2 explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

In support of its ruling request, the following representations have been made by the appropriate parties:

None of the CNOL of the Taxpayer Group that arose during Year 2 was carried back to a prior consolidated return year of the Taxpayer Group.

None of the CNOL of the Taxpayer Group that arose during Year 2 was carried back to a prior consolidated return year of the Group A, Group B, Group C, or Group D

consolidated groups, such groups having been acquired by the Taxpayer Group during the carryback period.

A portion of the CNOLs of the Taxpayer Group that arose during Year 2 may have been attributable to a corporation that was a member of neither the Taxpayer, Group A, Group B, Group C, nor Group D consolidated groups at some time during the carryback period (non-Taxpayer/non-acquired group years). No information with respect to losses which could have been carried back to non-Taxpayer/non-acquired group years was communicated from any member of the Taxpayer Group to any person from which the Taxpayer, Group A, Group B, Group C, or Group D consolidated groups acquired such corporation (including any third-parties acting on behalf of any such person from which the Taxpayer Group acquired such corporation) and no portion of the CNOL was carried back to such non-Taxpayer/non-acquired group years.

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 the election with respect to the relinquishment of the entire carryback period for the CNOL for the Year 2 tax year, as described above.

The above extension of time is conditioned on the Taxpayer 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 Group's tax liability for the year involved. A determination thereof will be made 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 Taxpayer Group's liability is lower. Section 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer Group's return must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement.

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, copies of this letter are being sent to Taxpayer's authorized representatives.

Sincerely,

*Ken Cohen*

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

cc: