

**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:B02

PLR-119105-06

Date: May 17, 2006

TY: Year ending

Legend

Taxpayer =

Date 1 =

Date 2 =

Company Official =

Dear :

This letter responds to a letter dated April 4, 2006, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an Election. Taxpayer is requesting an extension to file an election under § 1.1502-21T(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 tax year ending Date 1. The material information is summarized below.

Taxpayer was the common parent of a consolidated group which sustained a CNOL in the tax year ending Date 1. No portion of the CNOL for the year ending Date 1 was carried back to offset taxable income recognized in any tax year of any consolidated group ending prior to January 29, 2005. No corporation which was a member of the Taxpayer's consolidated group at any time during the tax year ending Date 1 had a separate return year (within the meaning of § 1.1502-1(e)) at any time during the carryback period.

Taxpayer intended to relinquish the entire carryback period for the CNOL on its tax return for the tax year ending Date 1. The return was timely filed consistent with a valid election having been made. However, for various reasons, a valid election was not filed.

Subsequent to Date 2, the date that the return was filed, 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 on limitations on assessment under § 6501(a) has not expired for the taxable year for which the election should have been made or for any subsequent year.

Section 1.1502-21T(b)(3)(i) provides that a consolidated group may elect to relinquish the 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 § 1.1502-21(b)(3)(i) to waive the entire carryback period pursuant to § 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 1.1502-21T(b)(3)(i) provides that the statement must be filed with the group's income tax return for the consolidated return year in which the CNOL arises.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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. § 1.1502-21T(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 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 Taxpayer and Company Official 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).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer has shown 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 Taxpayer to file the election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ending Date 1, as described above.

The above extension of time is conditioned on the Taxpayer group'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 amount of any tax liability. 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 the taxpayers' tax liability is lower. Section 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.1502-21T(b)(3)(i). Taxpayer's return must be amended to attach the election required by § 1.1502-21T(b)(3)(i). A copy of this letter must be attached to such return; alternatively, if the amended return is filed electronically this requirement may be satisfied by attaching to that return a statement that provides the date and control number of the letter ruling.

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 this ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, all essential facts should 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(s) who requested it. Section 6110(k)(3) 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 representatives.

Sincerely,

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

cc: