

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

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PLR-114078-06

Date:

July 26, 2006

TY:

Legend

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Date 1 =

Date 2 =

Tax Professional =

Dear :

This letter responds to a letter dated January 31, 2006, 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 §1.1502-21(b)(3)(i) of the Income Tax Regulations (as in effect for the taxable year at issue) 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 taxable year ending Date 1.

Additional information was submitted in letters dated April 28 and May 9, 2006. The material information submitted for consideration is summarized below.

Taxpayer was the common parent of a consolidated group which sustained a CNOL in the taxable year ending Date 1. It has been represented that only Subsidiary 1 and Subsidiary 2 were eligible under §172 of the Internal Revenue Code and §1.1502-21 of the Income Tax Regulations to carry back to their separate return years any amount of the consolidated group's CNOL. It has also been represented by the appropriate parties that no portion of the CNOL has been carried back nor will be carried back to a prior separate return year of Subsidiary 1 or Subsidiary 2. Furthermore, it has been represented that the group has carried forward the entire CNOL to future years.

Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on the tax return for the taxable 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 the return was filed, 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 expired for the taxable year for which the election should have been filed; however, Taxpayer represents that no portion of the CNOL has been absorbed during a taxable year that is closed.

Section 1.1502-21(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 1.1502-21(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 310.9100-2 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 and Tax Professional 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 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 of the CNOL for the taxable year ending Date 1, as described above.

Taxpayer should file the election in accordance with §1.1502-21(b)(3)(i) as in effect for the year at issue. Taxpayer'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. Alternatively, taxpayers filing their returns electronically may satisfy this latter requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on Taxpayer's 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 the 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. Specifically, no opinion is expressed as to the amount, if any, of the CNOL for the taxable year ending Date 1. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by the taxpayer, its representatives, and other parties. 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 ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

*Ken Cohen*

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

cc: