

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:04

PLR-146374-06

Date:

December 21, 2006

Legend

Taxpayer =

Target =

Date 1 =

Date 2 =

Company Official =

Dear :

This letter responds to a letter dated September 26, 2006, 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, as successor to Target, to file an election under § 1.1502-21T(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 Target was the common parent for the taxable year ending Date 1.

Target was the common parent of a consolidated group that sustained a CNOL in the short period prior to Target's merger into Taxpayer on Date 1. Target's consolidated group ceased to exist upon the merger. No corporation which was a member of Target'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. No portion of the CNOL for the Date 1 tax year was carried back to offset taxable income in any tax year of the consolidated group ending prior to Date 1.

Taxpayer intended to relinquish the carryback period for Target's consolidated group's CNOL on Target's tax return for the tax year ending Date 1. However, for various reasons, a valid election was not filed. Subsequent to Date 2, 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 1.1502-21T(b)(3)(i) provided, for the year at issue, 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) provided 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 301.9100-2 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 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 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, 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) and (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 for the Target consolidated group CNOL for the tax year ending Date 1, as described above.

Taxpayer should file the election in accordance with § 1.1502-21T(b)(3)(i) as in effect for the year at issue. Target's return must be amended to attach the election statement required by § 1.1502-21T(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 Target's consolidated group's tax liability, as well as the tax liability of its members, 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 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 any 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 ruling is directed only to the taxpayer requesting 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 representative.

Sincerely,

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