

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:01
PLR-112086-07

Date:
June 11, 2007

LEGEND:

Parent =

Former Parent =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated March 8, 2007, requesting, on behalf of Parent, an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent to file an election under § 1.1502-21T(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses ("CNOLs") attributable to Parent and its subsidiaries ("Subsidiaries"), the portion of the carryback period for which Parent and Subsidiaries

were members of Former Parent's consolidated group (sometimes hereinafter referred to as the "Election"). All citations in this letter to regulations under § 1.1502-21T are to regulations in effect for taxable year ending Date 3. Additional information was received in subsequent correspondences dated April 17, 2007, April 24, 2007 and May 16, 2007. The material information submitted in the request and subsequent correspondences is summarized below.

Prior to Date 2, Parent and Subsidiaries were members of the Former Parent consolidated group and were included in the consolidated Federal income tax return of Former Parent. On Date 1, Parent issued new stock, deconsolidating Parent and Subsidiaries from Former Parent. On Date 2, Parent and Subsidiaries formed a new consolidated group.

Parent and Subsidiaries filed a consolidated Federal income tax return for the short period from Date 2 through Date 3 (the "Short Period Return"). Parent intended to file the Election. Section 1.1502-21T(b)(3)(ii)(B) required the Election to be filed with the Short Period Return, but for various reasons a valid election was not filed with such return. After the due date of the Short Period Return, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made are not closed by the period of limitation on assessment under § 6501(a).

It has been represented that none of the CNOLs from the Parent consolidated group for the tax year beginning Date 2, or any subsequent year, has been carried back, nor will be carried back, to a prior return year of any member (or predecessor) of the Parent consolidated group, including a consolidated return which includes any member (or predecessor).

Section 1.1502-21T(b)(3)(ii)(B) provides that if one or more members of a consolidated group become members of another consolidated group, the acquiring consolidated group may elect to relinquish, with respect to all CNOLs attributable to the member, the portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group from the acquired group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under § 172.

The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(ii)(B) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification numbers of members]." Section 1.1502-21T(b)(3)(ii)(B) provides that the statement must be filed

with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member.

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. 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)(ii)(B)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent 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 Parent, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied upon a qualified tax professional who failed to make, or advise Parent 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 government will not be prejudiced if relief is granted. Sections 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown that 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 Parent to file the Election regarding the relinquishment, with respect to all CNOLs attributable to Parent and Subsidiaries, of the portion of the carryback period for which Parent and Subsidiaries were members of the Former Parent consolidated group, as described above.

The above extension of time is conditioned on Parent's and Subsidiaries' 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 timely made (taking into account the time

value of money). No opinion is expressed as to Parent's consolidated group's tax liability for the years involved. A determination thereof will be made by the applicable Director's office 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).

Parent should file the Election in accordance with § 1.1502-21T(b)(3)(ii)(B). Parent's return must be amended to attach the election statement required by § 1.1502-21T(b)(3)(ii)(B). A copy of this letter should be attached to the election statement. Alternatively, instead of attaching a copy of this letter to the return, Parent may attach a statement to its return that provides the date and control number of the letter ruling.

No opinion is expressed as to the tax consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late which 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 Parent, Company Official, Tax Representative and Former Parent. 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.

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