

## 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:06

PLR-120940-07

Date:

September 07, 2007

### Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Year =

Date 1 =

Company        =  
Official

Tax             =  
Professionals

Dear

This letter responds to a letter dated March 29, 2007, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations. Additional information was submitted in letters dated July 24, August 6, and August 7, 2007. The extension is being requested in order to allow Parent, as common parent of the consolidated group that includes Subsidiary 1, Subsidiary 2, and Subsidiary 3, to file elections ("Elections") under § 362(e)(2)(C). The material information is summarized below.

In Year and at all times since, Parent was the common parent of an affiliated group that filed a consolidated Federal income tax return. Parent owned 100% of Subsidiary 1; Subsidiary 1 owned 100% of Subsidiary 2; and Subsidiary 2 owned 100% of Subsidiary 3. Subsidiary 3 owned stock of Subsidiary 4, but Subsidiary 4 was not a member of the affiliated group and filed a separate return.

On Date 1, Subsidiary 1 transferred assets to Subsidiary 2 in a tax-free transfer described in § 351. In the aggregate, the assets transferred had tax bases exceeding fair market value.

Also on Date 1, but subsequent to the above transfer, Subsidiary 2 transferred assets to Subsidiary 3 in a tax-free transfer described in § 351. In the aggregate, the assets transferred had tax bases exceeding fair market value.

Also on Date 1, but subsequent to the transfer by Subsidiary 2 to Subsidiary 3, Subsidiary 3 transferred assets to Subsidiary 4 in a tax-free transfer described in § 351. In the aggregate, the assets transferred had tax bases exceeding their fair market value.

Section 362(e)(2)(A) provides that, if property is transferred by a transferor in any transaction which is described in § 362(a) and which is not described in § 362(e)(1) and the transferee's aggregate adjusted bases of property so transferred exceeds the fair market value of such property immediately after the transfer, then the transferee's

aggregate adjusted bases of the property transferred shall not exceed the fair market value of such property immediately after the transaction. Section 362(e)(2)(C) provides an election under which § 362(e)(2)(A) will not apply but instead applies the limitation to transferor's basis in stock received in the transaction. If the transferor and transferee agree to make this election, the transferor's basis in the stock received shall not exceed its fair market value immediately after the transfer. Section 362(e)(2)(C)(ii) delegates authority to the Secretary to promulgate regulations that prescribe the time and manner in which the transferor and transferee make the election.

In Notice 2005-70, 2005-2 C.B. 694, the IRS provided guidance on how to make an election under § 362(e)(2)(C) pending the issuance of additional guidance. The Notice stated that, if the transferor is not a controlled foreign corporation under § 957, the election is made by the transferor including a certification on or with its tax return filed by the due date (including extensions) for filing its original return for the taxable year in which the transaction occurred. Briefly, the certification provides that the transferor and transferee make an election under § 362(e)(2)(C) with respect to a transfer of property described in § 362(e)(2)(A). The common parent of a consolidated group makes the election on behalf of its group members.

The Elections were required to be filed with Parent's consolidated income tax return for Year. For various reasons, however, Parent failed to file the Election in a timely manner. The period of limitations on assessment under § 6501(a) has not expired for Parent's consolidated group's or Subsidiary 4's taxable years for which the election should have been made or for any subsequent taxable year.

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 (§ 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. The Commissioner will grant requests for relief under § 301.9100-3 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.

In this case, the time for filing the Elections is fixed by Notice 2005-70. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an

extension of time for Parent to file the Elections, provided Parent shows that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Elections; that the request for relief was filed before the IRS discovered the failure to make the Elections; and that the granting of the relief will not prejudice the government. See §§ 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; that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied; and that 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 Parent to file the Elections with respect to the § 351 transfers described above.

This extension of time is conditioned on Parent's consolidated group's and Subsidiary 4's tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply than it would have been if the Elections had been timely made (taking into account the time value of money). No opinion is expressed as to the tax liability for the years involved. No opinion is expressed as to the Federal income tax effect, if any, if it is determined that the tax liability is lower.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction discussed in this letter. Specifically, no opinion is expressed as to whether the transactions are described in § 351, nor is any opinion expressed concerning the basis or fair market value of any asset.

We express no opinion as to the tax effects or consequences of filing the Elections 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 effects resulting from, filing the Elections late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we have relied on certain statements and representations that Parent, Company Official, and Tax Professionals made under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Elections, any penalties and interest that would otherwise be applicable still apply.

The ruling is directed only to the taxpayer requesting it. Under § 6110(k)(3), this ruling may not be cited or used 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Sincerely,

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