

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-129043-08

Date:

November 19, 2008

TY:

FCorp1 =

FCorp2 =

Old Common
Parent =

New Common
Parent =

Taxpayer =

Sub1 =

Sub2 =

Tax =
Professionals

Date1 =

Date2 =

Date3 =

Year1 =

Year2 =

Year3 =

x =

\$y =

Dear :

This letter responds to a letter dated June 16, 2008, 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 to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations (hereinafter referred to as the “Election”) 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 short taxable year ending Date3. Additional information was received in subsequent correspondence dated July 23, November 4, and November 7, 2008. The material information is summarized below.

Prior to and including Year1, FCorp1 (a foreign corporation) wholly owned Old Common Parent, a U.S. corporation, and Old Common Parent owned, directly and indirectly, more than eighty percent of the outstanding stock of Taxpayer. At all times prior to and including Year1, Taxpayer and its lower-tier subsidiaries joined Old Common Parent in the filing of a U.S. consolidated tax return based on a calendar year.

On or about Date1, Taxpayer issued additional shares to employees that caused Old Common Parent's ownership interest in Taxpayer to be less than that required for continuing to file a U.S. consolidated return. As a result of the stock issuance, Taxpayer and its lower-tier subsidiaries became a separate U.S. consolidated group with Taxpayer as the common parent.

On Date2, Sub1 and Sub2, a separate consolidated group, became members of Taxpayer's consolidated group after Taxpayer acquired stock of the common parent, Sub1. Taxpayer filed a separate short period consolidated return for Year2.

On Date3, all of the issued and outstanding stock of Taxpayer was acquired by New Common Parent. New Common Parent is owned x percent by FCorp2 (a foreign corporation) and has its own lower-tier subsidiaries that, prior to Date3, joined in the filing of a U.S. consolidated tax return with New Common Parent.

Taxpayer, as the common parent of its group, filed a second, separate short period consolidated return for Year3 that ended on Date3 and on which a \$y CNOL was reported. A portion of the CNOL was attributable to Sub2.

Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for the taxable year ending Date3; however, for various reasons, a valid election was not filed. Subsequent to Taxpayer filing the Year3 return, it was discovered that a valid election had not been filed. Thereafter, this request was submitted under § 301.9100-3 for an extension of time to file a valid election. The period of limitations on assessments under § 6501(a) of the Internal Revenue Code has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year.

Taxpayer represents that the consolidated group of which it was the common parent for the tax year that ended Date3 has not, and will not, carry any portion of the CNOL back to a prior consolidated return year of the Taxpayer consolidated group. Taxpayer also represents no member of the consolidated group of which Taxpayer was the common parent for the tax year that ended Date3, other than Sub1 and Sub2, had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period, other than a separate return year in which it was a member of the Old Common Parent's consolidated group. Taxpayer further represents that a portion of the CNOL for the tax year that ended Date3 was attributable to Sub2 but that none was attributable to Sub1. Sub1 as the common parent for Sub2 represents that none of the CNOL for the tax year that ended Date3 that was attributable to Sub2 has been carried back, or will be carried back, to offset income of the Sub1 consolidated group. Finally, Old Common Parent represents that it has not, and will not, deduct any portion of any CNOL sustained by Taxpayer's consolidated group for the tax year that ended Date3.

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 SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 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.

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. See § 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. See § 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 shows that 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 on behalf of Taxpayer and by Tax Professionals explain the circumstances that resulted in the failure to timely file the election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, a valid Election and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer has shown that 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, we grant an extension of time under § 301.9100-3, until forty-five days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's consolidated group's tax liability and the tax liability of any consolidated group of which a member of Taxpayer's consolidated group becomes a member (if any) being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, 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 tax liability for the years involved. A determination thereof will be made by the 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 amount of tax liability is lower. See § 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.1502-21(b)(3)(i). 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, if Taxpayer files its amended return electronically, Taxpayer may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-129043-08) of this ruling letter.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter.

In addition, we express no opinion as to the tax effects or any other 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 effects 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 Taxpayer, Tax Professionals, Sub1, and Old Common Parent. However, the appropriate Service office should verify all essential facts. 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.

PROCEDURAL STATEMENTS

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)