

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
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Date:
May 27, 2009

LEGEND:

a =

Company Official 1 =

Company Official 2 =

Date A =

Date B =

Foreign Parent =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This letter is in response to your authorized representative's letter dated November 26, 2008, requesting an extension of time under §§301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election under §1.1502-13(l)(3) of the Income Tax Regulations (hereinafter referred to as the "Election"). Additional information was received in letters dated April 17, 2009, April 24, 2009, April 28, 2009, and May 27, 2009. The material information is summarized below.

Parent is the common parent of a life-nonlife consolidated group that has a calendar taxable year. Parent is a wholly owned indirect subsidiary of Foreign Parent. Parent owns approximately a percent of the stock of Sub 1. The remaining stock of Sub 1 is owned by various other direct and indirect subsidiaries of Foreign Parent. Sub 2 is a wholly owned (through a disregarded entity) subsidiary of Sub 1. Sub 3 is a wholly owned subsidiary of Sub 2.

At the beginning of Year 1, Sub 3 was a wholly owned subsidiary of Sub 5, Sub 5 was a wholly owned subsidiary of Sub 4, and Sub 4 was a wholly owned subsidiary of Sub 2. During Year 1, Sub 5 distributed one hundred percent of the stock of Sub 3 to Sub 4. Sub 4 immediately distributed such stock to Sub 2. In the next year, Sub 2 demutualized and became a stock insurance company, and Sub 1 became the

successor common parent to the consolidated group of which Sub 2 had been the common parent.

In July 1995, the Internal Revenue Service and Treasury Department published new intercompany transaction regulations under §1.1502-13 governing the treatment of transactions between members of a consolidated group. The regulations are generally effective for transactions occurring in taxable years beginning on or after July 12, 1995. Section 1.1502-13(l)(1).

Section 1.1502-13(l)(3) of the regulations permitted taxpayers to elect to have the regulations apply to certain stock elimination transactions (i.e., those transactions described in §1.1502-13(l)(3)(ii)) that occurred in a year to which prior law would otherwise apply. To make the Election under §1.1502-13(l)(3), taxpayers were required to include a statement making the Election with their original return for the taxable year including July 12, 1995.

Sub 1 was the common parent of a life-nonlife consolidated group for the taxable year that included July 12, 1995.

In Year 4 (which was after the due date for the Election), Foreign Parent indirectly owned a percent of the stock of Sub 1 and caused that stock and certain other assets to be contributed to Parent in a transaction that was treated as qualifying for nonrecognition treatment under §351. After this transaction, Parent became the common parent of the consolidated group of which Sub 1 had been the common parent.

The Election was required to be filed by Date A, but for various reasons, a valid Election was not filed. On or shortly after Date B (which was after the due date for the Election), it was discovered that no Election was made by Sub 1 with respect to the Sub 1 consolidated group.

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., §1.1502-13(l)(3)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Sub 1 to file the Election, provided Sub 1 shows 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 Sub 1, Company Official 1, and Company Official 2 explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Sub 1 reasonably relied on a qualified tax professional who failed to make, or advise Sub 1 to make, the 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 Sub 1 has shown 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, an extension of time is granted under §301.9100-3, until 45 days from the date on this letter, for Sub 1 to file the Election.

The above extension of time is conditioned on Sub 1's and Parent's consolidated groups' tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' 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 taxpayer's tax liability is lower. Section 301.9100-3(c).

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

In addition, we express no opinion as to the 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 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. However, the Director 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.

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.

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 their return that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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