

## 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:B03

PLR-126042-09

Date:

June 26, 2009

TY:

### LEGEND:

Parent =

Shareholder A =

Corporation X =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Tax Professional =

Company Official =

a =

b =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated May 18, 2009, requesting on behalf of Parent 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 Parent to file an election under §1.1502-75(d)(3)(iii) of the Income Tax Regulations to treat Parent as owning a percentage of its own stock under §1.1502-75(d)(3)(ii) immediately after its acquisition of Corporation X on Date 1 to determine whether the acquisition is a reverse acquisition under §1.1502-75(d)(3)(i) (the "Election"). The material information submitted is summarized below.

Parent was a corporation with a taxable year ending on Date1. Prior to Date 1, Corporation X was the parent of an affiliated group of corporations filing a consolidated return with a taxable year ending on Date 2. The Corporation X consolidated group consisted of Corporation X, Subsidiary 1, and Subsidiary 2. At all times during the five year period ending on Date 1, Parent owned more than 25 percent of the outstanding stock of Corporation X.

Immediately prior to Date 1, Parent owned a percent of Corporation X and Shareholder A owned the remaining b percent of Corporation X. On Date 1, Parent acquired all of Shareholder A's Corporation X stock in a transaction that would have qualified as a reverse acquisition under §1.1502-75(d)(3)(i) if Parent had made a timely Election under §1.1502-75(d)(3)(iii). On Date 3, a date after Date 1, Corporation X acquired all of the outstanding stock of Subsidiary 3.

The Election was due on or before the due date of Parent's return but for various reasons the Election was not timely filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time for Parent to file the Election. The period of limitations on assessment under §6501(a) has not expired for the taxable years that would have been affected by the Election had it been timely filed.

Section 1.1502-75(d)(3)(iii) provides that if an acquiring corporation, the first corporation, continuously owned for a period of at least five years ending on the date of the acquisition, at least 25 percent of the fair market value of the target corporation, the second corporation, then the first corporation may make an Election to be treated as owning a certain percentage of its outstanding stock immediately after the acquisition to determine whether the acquisition is a reverse acquisition under §1.1502-75(d)(3)(i). The Election must be filed on or before the due date (including extensions of time) of the return for the group's first consolidated return year ending after the date of the acquisition.

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 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 regulations (i.e. §1.1502-75(d)(3)(iii)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the election, provided Parent establishes 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 by Parent, Tax Professional, and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to timely make, or advise Parent to timely make, the Election. Section 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Parent has established 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, provided the transaction

substantively qualifies as a reverse acquisition for the applicable tax year, we grant an extension of time under §301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the consolidated group's 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 made timely (taking into account the time value of money). No opinion is expressed as to the consolidated group's tax liability for the year involved. 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 the consolidated group's tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Parent qualifies substantively to file an election or whether Parent's acquisition of Corporation X constituted a reverse acquisition. In addition, 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 or 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 Parent and/or its representatives. However, all essential facts may 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 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 the letter ruling.

In accordance with the Power of Attorney on file with 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)