

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:B05

PLR-134265-09

Date:

November 02, 2009

LEGEND

Parent =

Sub1 =

Newco =

Year1 =

DateA =

DateB =

DateC =

First Parent Official =

Second Parent =

Official

Dear :

This letter responds to a letter dated July 8, 2009, submitted on behalf of Parent, requesting the Internal Revenue Service ("Service") to grant an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a request for an automatic waiver, pursuant to Rev. Proc. 2002-32, 2002-1 C.B. 959, of the application of § 1504(a)(3)(A) of the Internal Revenue Code with respect to Sub1. The request for waiver of the application of § 1504(a)(3)(A) is hereinafter sometimes referred to as the "Waiver Election." Additional information was received in subsequent correspondence dated August 19 and October 7, 2009. The material information submitted is summarized below.

Parent, a domestic corporation, is the common parent of an affiliated group of corporations ("Parent Group") which file a consolidated Federal income tax return. Prior to DateA, Parent Group included Sub1. On DateA, Sub1 ceased to be a member of Parent Group as a result of all the Sub1 stock being acquired by Newco, which was not a Parent Group member.

Through transactions occurring subsequent to DateA, Newco and Sub1, became members of Parent Group. Thus, on DateB, Sub1 was again affiliated with Parent Group. For Year1 (which includes DateB), and all subsequent years, Sub1 was included in the consolidated Federal income tax returns filed by Parent Group. However, DateB was a date less than sixty months following the year of disaffiliation of Sub1 from Parent Group. Thus, because of the limitation of § 1504(a)(3)(A), it was necessary to obtain a § 1504(a)(3)(B) waiver in order for Sub1 to properly be included in these Parent Group returns. The Waiver Election should have been requested under Rev. Proc. 2002-32, and included in Parent Group's Year1 consolidated Federal income tax return filed DateC. However, for various reasons, no waiver has ever been requested. Subsequently, it was discovered that the Waiver Election had not been filed. Thereafter, this request was submitted for an extension of time to file the Waiver Election.

REPRESENTATIONS

Parent has made the following representations in connection with this matter:

(a) For Year1 and all subsequent years, Sub1 was included on Parent Group's Form 851 and all of Sub1's income and expenses have been included on Parent Group's timely filed consolidated returns.

(b) Permitting the Waiver Election to be made now will not result in Parent Group having a lower tax liability in the aggregate for all affected taxable years than Parent Group would have had if the Waiver Election had been timely made (taking into account the time value of money).

(c) As of the date the request for the present ruling was submitted to this office, the Service had not contacted Parent, or any member of Parent Group, concerning Parent's failure to timely file the Waiver Election.

LAW AND ANALYSIS

Section 1504(a)(3)(A) provides that if a corporation is included (or required to be included) in a consolidated Federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (or any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by any affiliated group with the same common parent or any successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Rev. Proc. 2002-32, section 3, grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in an automatic waiver request. Section 5 provides that in order to obtain an automatic waiver, the deconsolidated corporation must be included in a timely filed (including extensions) consolidated return of the affiliated group with respect to which the waiver request relates, for the taxable year that includes the date on which such corporation most recently became a member of such affiliated 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.

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.

Section 301.9100-1(a) describes the Commissioner's authority to grant an extension of time to make a regulatory election. 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 Waiver Election is fixed by Rev. Proc. 2002-32. Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Waiver Election, provided Parent 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 Parent, First Parent Official, and Second Parent Official explain the circumstances that resulted in the failure to timely file the Waiver Election. The information establishes: (a) that the present request for relief was submitted to this office prior to the Service discovering that the Waiver Election had not been timely made; and (b) that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Waiver Election. See § 301.9100-3(b)(1)(i) and (v).

CONCLUSION AND GRANT OF EXTENSION

Based solely on the information and affidavits submitted and on the representations made, we conclude that Parent 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, an extension of time is granted under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to request a waiver under § 1504(a)(3)(B) to include Sub1 in Parent Group's consolidated Federal income tax returns for Year1 and all subsequent years pursuant to section 3 of Rev. Proc. 2002-32.

The above extension of time is conditioned on the tax liability (if any) of Parent Group and Sub1, and, also, the tax liability (if any) of any consolidated group of which a member of Parent Group becomes a member, being not lower, in the aggregate, for all years to which the Waiver Election applies and all subsequent years, than it would have been if the Waiver 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 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 amount of tax liability is lower. Section 301.9100-3(c).

CAVEAT

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 ruling letter. In particular, we express no opinion with respect to (i) whether Parent Group constitutes an affiliated group that is entitled to file on a consolidated basis; or (ii) whether Sub1 is otherwise includible in any consolidated return.

For purposes of granting this relief, we relied upon certain information, representations, and affidavits submitted by Parent, First Parent Official, and Second Parent Official. This office has not verified any of the material submitted in support of the request for rulings. The Director should verify all essential facts.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code 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, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-134265-09) of this letter ruling.

In accordance with a 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)

cc: