

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:B04
PLR-145558-10
Date:
January 25, 2011

Parent =

Seller =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Date 1 =

Date 2 =

Date 3 =

Month =

Year =

Company
Official =

Dear _____ :

This letter responds to a letter dated November 4, 2010, requesting, on behalf of Parent, an extension of time under § 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 § 1.1502-21(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses (“CNOLs”) of the consolidated group of which Parent is the common parent attributable to Sub 2, Sub 3, and Sub 4, the portion of the carryback period for which Sub 2, Sub 3, and Sub 4 were members of another group (sometimes hereinafter referred to as the “Election”). The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that file a consolidated federal income tax return (the “Parent Group”). Sub 1 is a member of the Parent Group.

For all relevant periods, Seller was the common parent of another affiliated group (the “Seller Group”), which prior to Date 2, included Sub 2, Sub 3, and Sub 4. Sub 2 wholly owns Sub 3 and Sub 4. On Date 1, Sub 1 purchased all of the outstanding stock of Sub 2 from the Seller Group (the “Date 1 Acquisition”). On Date 2, Sub 2, Sub 3, and Sub 4 became members of the Parent Group.

For the taxable year ending Date 3, the Parent Group timely filed a consolidated federal income tax return. Sub 2, Sub 3, and Sub 4 were included in the Parent Group's consolidated return for the portion of the taxable year that they were members of the consolidated group.

The Election was due by the due date of Parent's tax return for the taxable year ending Date 3, but for various reasons a valid election was not filed. In Month of Year 1, after the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent Group's taxable year in which the Election should have been filed or any subsequent taxable years.

Seller has represented that it has not and will not include in any of its U.S. consolidated income tax returns net operating losses generated after Date 1 by Sub 2, Sub 3, or Sub 4.

Section 1.1502-21(b)(3)(ii)(B) provides that if one or more members of a consolidated group becomes a member of another consolidated group, the acquiring consolidated group may irrevocably elect to relinquish, with respect to all CNOLs

attributable to the member, the portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under § 172.

The election is made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” Section 1.1502-21(b)(3)(ii)(B) further provides that the statement must be filed with the acquiring consolidated group’s original income tax return for the year the corporation (or corporations) became a member.

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). Sections 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making certain 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 to the satisfaction of the Commissioner 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., § 1.1502-21(b)(3)(ii)(B)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the 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, an affidavit, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes 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). The information also establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown 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, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election regarding the relinquishment, with respect to all CNOLs of the Parent group attributable to Sub 2, Sub 3, and Sub 4, of the portion of the carryback period for which Sub 2, Sub 3, and Sub 4 were members of another group, as described above.

Parent should file the Election by filing the statement described in § 1.1502-21(b)(3)(ii)(B). Parent's returns must be amended to attach the election statement required by § 1.1502-21(b)(3)(ii)(B). A copy of this letter should be attached to the Election statement. 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.

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 Parent, Seller, and Company Official. However, all essential facts must 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 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
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)