

Internal Revenue Service

Number: **201235003**

Release Date: 8/31/2012

Index Number: 9100.22-00, 1502.76-01

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:B06

PLR-104840-12

Date:

May 31, 2012

In re:

Legend

Parent =

Subsidiary =

Foreign Corporation =

a% =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 1, 2012, submitted on behalf of Parent and Subsidiary. Parent and Subsidiary are requesting 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 in order to allow Parent and Subsidiary to make a ratable allocation election (the "Election") under § 1.1502-76(b)(2)(ii) of the Income Tax Regulations. Additional information was submitted in a letter dated April 18, 2012. The material information submitted for consideration is summarized below.

Parent was a calendar year corporation. Parent was the common parent of an affiliated group (the "Parent Group"), including Subsidiary, that filed a consolidated Federal income tax return. Parent and Subsidiary maintained their books on the accrual method.

At the beginning of Year 1, Parent directly or indirectly owned all of the shares of stock of Subsidiary. On Date 1, Foreign Corporation purchased a% of the stock of Subsidiary from Parent. As a result, Subsidiary ceased to be a member of the Parent consolidated group at the end of the day on Date 1.

Parent and Subsidiary were required to file the Election in order to ratably allocate Subsidiary's items of income, gain, deduction, loss, and credit between Subsidiary's tax years ending and beginning with its change in status as a member of the Parent consolidated group. The Election was required to be filed with Parent Group's consolidated income tax return for its tax year ending Date 3 and with Subsidiary's tax return for its short tax year from Date 2 to Date 3. However, for various reasons, Parent and Subsidiary failed to make a valid Election. In Year 2, after the date for which a valid Election can be filed, 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 the Election. Parent and Subsidiary have represented that they are not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time they requested relief.

Under § 1.1502-76(a), the consolidated return of a group must be filed on the basis of the common parent's tax year. Under § 1.1502-76(b)(1)(i), a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year

for which it is a member. If the consolidated return includes the items of a corporation for only a portion of its tax year, items for the portion of the year not included in the consolidated return must be included in a separate return.

Under § 1.1502-76(b)(1)(ii), if a corporation becomes or ceases to be a member during a consolidated return year, it ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Under § 1.1502-76(b)(2)(i), the returns for the years that end and begin with the corporation becoming (or ceasing to be) a member are separate tax years for all Federal income tax purposes.

In lieu of the general rule of § 1.1502-76(b)(2)(i) which requires a closing of the books, § 1.1502-76(b)(2)(ii) provides that if the corporation is not required to change its annual accounting period or its method of accounting as a result of its change in status as a member of a consolidated group, and an irrevocable election is made under § 1.1502-76(b)(2)(ii)(D), the corporation's items (other than certain "extraordinary items") may be ratably allocated between the periods. If this election is made, an equal portion of the corporation's items are allocated to each day of the corporation's original year (the tax year determined without taking § 1.1502-76 into account), except that extraordinary items must be allocated to the day that they are actually taken into account. Under § 1.1502-76(b)(2)(ii)(D), the election to ratably allocate the corporation's items is made in a separate statement filed on or with the returns including the items for the years ending and beginning with the corporation's change in status.

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 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).

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 to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the Government's interests. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-76(b)(2)(ii)(D)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Subsidiary to file the Election, provided Parent and Subsidiary establish they 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, Subsidiary, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent and Subsidiary reasonably relied on a qualified tax professional who failed to make, or advise either Parent or Subsidiary to make, the Election and that the request for relief was filed before the failure to timely 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 affidavits submitted and the representations that have been made, we conclude that Parent and Subsidiary 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 that Parent and Subsidiary qualify substantively to make the Election, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent and Subsidiary to file the Election.

The Election must be filed in accordance with § 1.1502-76(b)(2)(ii)(D). Parent and Subsidiary must amend all returns necessary to make the Election and to report Parent's and Subsidiary's items in accordance with the Election. Parent and Subsidiary must also enter into an agreement as described in § 1.1502-76(b)(2)(ii)(D)(2).

The above extension of time is conditioned on the Parent Group's and Subsidiary'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 timely made (taking into account the time value of money). We express no opinion as to the Parent Group's or Subsidiary's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

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 particular, we express no opinion with respect to whether Parent and Subsidiary qualify substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Internal Revenue 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 this letter.

Notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable 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.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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