

## Internal Revenue Service

Number: **201312019**

Release Date: 3/22/2013

Index Number: 9100.22-00, 1502.92-00

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-133086-12

Date:

December 17, 2012

### Legend

Successor =

Taxpayer =

Sub =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company  
Official =

Dear :

This is in response to a letter dated July 30, 2012, submitted on behalf of Successor, as successor-in-interest to Taxpayer, 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 for Successor, on behalf of Taxpayer, to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback period for the Taxpayer consolidated group's consolidated net operating loss ("CNOL") for the taxable year ending Date 1 (the "Election"). Additional information was submitted in a letters dated September 10, 2012, December 5, 2012, and December 14, 2012. The material information submitted for consideration is summarized below.

Prior to the taxable year ending Date 1, Taxpayer filed separate federal income tax returns. Taxpayer incorporated Sub as a wholly owned subsidiary during the taxable year ending Date 1. Taxpayer filed a return as the common parent of a consolidated group that consisted of it and Sub ("Taxpayer Group") for the taxable year ending Date 1. On Date 3, Taxpayer and Sub became members of a different consolidated group. On Date 4, Taxpayer merged into Successor, with Successor surviving.

Taxpayer Group incurred a CNOL for the taxable year ending Date 1. Successor has represented that Taxpayer has not carried back, and will not carry back, any portion of the Date 1 CNOL to a prior separate return year of Taxpayer.

The Election was required to be filed by Date 2, but for various reasons, Taxpayer failed to file a valid election. Thereafter, Successor, on behalf of Taxpayer, submitted this request under § 301.9100-3 for an extension of time to file the Election. Successor represents that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 of the Internal Revenue Code at the time that the time it requested relief.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification of parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group's income tax return for the consolidated return year in which the loss arises.

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). 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)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Successor, on behalf of Taxpayer, to file the Election, provided Successor shows that Taxpayer 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 Successor and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer 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 Successor has shown that Taxpayer 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 § 301.9100-1, until 45 days from the date on this letter, for Successor to file the Election with respect to the relinquishment of the entire carryback period for the CNOL for the taxable year ending Date 1, as described above.

The above extension of time is conditioned on the taxpayers' (Taxpayer and Sub's) 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 made (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 Director's office upon audit of the Federal income tax returns involved.

Successor should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer Group's return for the taxable year ended Date 1 must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer's amended return is filed electronically, this latter requirement may be satisfied by attaching to the return a statement that provides the date and control number (PLR-133086-12) of this ruling letter.

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.

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 effects or any other 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 effects 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 Successor and Company Official. The appropriate Service office, however, 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 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*

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

cc: