

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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Refer Reply To:

CC:CORP:B02

PLR-124754-13

Date:

July 16, 2013

### Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Date 1 =

Company  
Official =

Tax  
Professional =

Dear :

This is in response to a letter dated May 28, 2013, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulation to file an election. Parent is requesting an extension to file an election under §1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback period for the consolidated net operating loss ("CNOL") of the consolidated group of which Parent is the common parent for the tax year ended

Date 1. The information submitted in that request and subsequent submissions is summarized below.

Parent is the common parent of a consolidated group ("Parent Group") which incurred a CNOL for the tax year ended Date 1 ("Date 1 CNOL"). Parent Group is comprised of Parent, Subsidiary 1, and Subsidiary 2. Parent intended to relinquish the carryback period for the Date 1 CNOL, but a valid election was not filed. Parent then submitted this request for an extension of time to file a valid election.

Parent has represented that the Parent Group has not carried back, and will not carry back, any portion of the Date 1 CNOL to a prior consolidated return year of Parent Group. It has also been represented by appropriate parties that none of the Date 1 CNOL attributable to Subsidiary 1 or Subsidiary 2 has been carried back, or will be carried back, to a separate return year, within the meaning of § 1.1502-1(e), of the subsidiaries. Furthermore, Parent has represented that Parent Group 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 ("Code") at the time Parent requests relief and the new position requires or permits a regulatory election for which relief is requested.

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 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 number of common 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 not 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.

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. 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 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, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the election. The information establishes that Parent relied upon a qualified tax professional who failed to make, or advise Parent to make, the election, and 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) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has shown 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, 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 with respect to the relinquishment of the entire carryback period for the Date 1 CNOL, as described above.

The above extension of time is conditioned on Parent 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 Parent Group's tax liability for the years 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 Parent Group's liability is lower. Section 301.9100-3(c).

Parent should file the election in accordance with § 1.1502-21(b)(3)(i). Parent Group's returns 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 Parent files its returns electronically, it may satisfy this latter requirement by attaching a statement to its return that provides the date and control number of this letter ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, 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 Code or 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 Parent , Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, 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(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: