

ID: CCA\_2013080813454917

[Third Party Communication:

UILC: 6402.03-02

Date of Communication: Month DD, YYYY]

Number: **201402008**

Release Date: 1/10/2014

---

**From:**

**Sent:** Thursday, August 08, 2013 1:45:49 PM

**To:**

**Cc:**

**Bcc:**

**Subject:** Advice

For the Year 1 tax year, CP, the common parent of a consolidated group, filed a tentative refund request based on a two-year carryback of the CNOLs of the group for that year. Fiduciary made a five-year extended carryback election for those same losses. The Service Center issued a tentative refund to CP with respect to its request.

For the Year 2 tax year, CP made a five-year extended carryback election for the CNOLs of the group for that year. Fiduciary filed a document attempting to “reverse” its previous five-year extended carryback election for Year 1 and elect a five-year extended carryback for the Year 2 tax year as well.

Both Fiduciary’s five-year extended carryback election for Year 1 and CP’s five-year extended carryback election for Year 2 were timely, but only one can be accepted. Fiduciary has executed a Form 870 agreeing to its initial five-year extended carryback election for Year 1, but the Service has not executed the Form 870 and the agreement is pending

The field has asked whether the Service can exercise its broad discretion under § 301.6402-7(f) to accept the filings by CP (request for a two-year carryback of the CNOLs of the group for the Year 1 tax year and the five-year extended carryback election of the CNOLs of the group for the Year 2 tax year) and not accept the filings by Fiduciary (its initial five-year extended carryback election of the CNOLs of the group for the Year 1 tax year). We advise that the Service may do so.