

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-130982-13
Date:
January 17, 2014

Legend

Parent =

Subsidiary =

Date 1 =

Company Official =

Tax Professional =

Dear :

This is in response to a letter dated July 11, 2013, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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 includes Parent and Subsidiary. 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 Parent Group has not carried back, and will not carry back, any portion of the CNOL for the tax year ended Date 1 to a prior consolidated return year of Parent Group, and that no member of Parent Group for the tax year ended Date 1 had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period. 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").

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 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.

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 filling 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 reasonably 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 60 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.

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 Group files its returns electronically, Parent may satisfy this latter requirement by attaching a statement to the 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

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

cc: