

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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PLR-142818-13

Date:

April 1, 2014

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Newco Sub =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Tax
Professional =

Company
Official =

Dear :

This letter responds to a letter dated September 26, 2013, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a request for an automatic waiver, pursuant to Rev. Proc. 2002-32, 2002-1 C.B. 959, of the application of § 1504(a)(3)(A) of the Internal Revenue Code with respect to Parent. The request for waiver of the application of § 1504(a)(3)(A), effective for the taxable year ending Date 4, is hereinafter sometimes referred to as the “Waiver Election.” The information provided in that letter and in later correspondence is summarized below.

Prior to Year 2, Parent was the common parent of an affiliated group of corporations that filed a consolidated U.S. Federal income tax return on a calendar year basis (“Parent Group 1”). Parent Group 1 consisted of Parent, Sub 1, Sub 2, Sub 3,

Sub 4, Sub 5, and Sub 6. On Date 1 (a date in Year 1), Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6 converted into single member limited liability companies, and thus became entities disregarded as separate from their owner for Federal tax purposes. On Date 2 (also a date in Year 1), Sub 1 liquidated. In Year 2, Parent was not affiliated with any includible corporation.

On Date 3 (a date in Year 3), Parent formed Newco Sub, a State corporation, and was again affiliated with an includible corporation with which it joined in the filing of a consolidated return ("Parent Group 2"). Beginning with Year 3 and for all subsequent years, Parent and Newco Sub reported their income, expenses, credits and deductions on a consolidated basis for Federal income tax purposes. However, Year 3 was less than sixty-one months following the time Parent ceased to be a member of Parent Group 1. Thus, pursuant to § 1504(a)(3)(A), it was necessary for Parent to obtain a waiver under § 1504(a)(3)(B) in order for it properly to be included in the Parent Group 2 consolidated return for Year 3. The Waiver Election should have been filed under Rev. Proc. 2002-32 with the Parent Group 2 Year 3 consolidated Federal income tax return. However, for various reasons, the Waiver Election was not filed. Subsequently, it was discovered that the Waiver Election had not been filed. Thereafter, this request was submitted for an extension of time to file the Waiver Election. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.

Section 1504(a)(3)(A) provides that if a corporation is included (or required to be included) in a consolidated Federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by any affiliated group with the same common parent or any successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in an automatic waiver request. Section 5 provides that in order to obtain an automatic waiver, the deconsolidated corporation must be included in a timely filed (including extensions) consolidated return of the affiliated group with respect to which the waiver request relates, for the taxable year that includes the date on which such corporation most recently became a member of such affiliated group.

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). 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. 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 interests of the Government. Section 301.9100-3(a).

The time for filing the Waiver Election is fixed by Rev. Proc. 2002-32. Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Waiver 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 Waiver Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Waiver Election and that that the request for relief was filed prior to the Service discovering that the Waiver Election had not been timely made. See § 301.9100-3(b)(1)(i) and (v).

Based solely on the information and affidavits submitted and on the representations made, we conclude that Parent has shown that 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, an extension of time is granted under § 301.9100-3, until forty-five (45) days from the date on this letter, for Parent to file the Waiver Election.

The above extension of time is conditioned on the tax liability (if any) of Parent Group 2 not being lower, in the aggregate, for the year to which the Waiver Election applies and all subsequent years, than it would have been if the Waiver Election had been timely made (taking into account the time value of money). No opinion is expressed as to the amount of 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. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the amount of tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter. In particular, we express no opinion with respect to whether Parent Group 1 or Parent Group 2 constitutes an affiliated group that is entitled to file on a consolidated basis.

For purposes of granting this relief under § 301.9100-3, we relied upon certain information, representations, and affidavits submitted by Parent, Company Official, and Tax Professional under penalties of perjury. This office has not verified any of the material submitted in support of the request for rulings. The Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Waiver 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.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen
Acting Chief, Branch 2
Office of Associate Chief Counsel (Corporate)