

## 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-109098-15

Date:

July 22, 2015

### Legend

New Parent =

Old Parent =

Subsidiaries =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Company Officials =

Tax Professional =

Dear :

This letter responds to a letter from your authorized representative, dated January 9, 2015, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for New Parent, Old Parent, and Subsidiaries to make an election to ratably allocate the Year 1 items of income, gain, deduction, loss, and credit between the periods ending with Old Parent and Subsidiaries ceasing to be members of the Old Parent consolidated group ("Old Parent Group") and beginning with Old Parent and Subsidiaries becoming members of the New Parent consolidated group ("New Parent Group"), under § 1.1502-76(b)(2) of the Income Tax Regulations (the "Election"). The material information provided in that letter and in a supplemental letter dated July 17, 2015, is summarized below.

New Parent was formed on Date 1. Through a series of transactions culminating on Date 2, Old Parent, the common parent of its own consolidated group ("Old Parent Group"), and Subsidiaries became members of the New Parent affiliated group ("New Parent Group") and the Old Parent Group terminated.

New Parent, Old Parent, and Subsidiaries were required to file the Election in order to ratably allocate Old Parent's and Subsidiaries' items of income, gain, deduction, loss, and credit between Old Parent's and Subsidiaries' tax years ending and beginning with its change in status as a member of the New Parent consolidated group. The Election was required to be filed with New Parent Group's consolidated income tax return for its tax year ending Date 3 and with Old Parent Group's consolidated income tax return for its tax year ending Date 2. However, for various reasons, New Parent, Old Parent, and Subsidiaries failed to make a valid Election. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. New Parent and Old Parent have represented that they are not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time they requested relief.

Section 1.1502-76(a) provides that the consolidated return of a group must be filed on

the basis of the common parent's tax year.

Section 1.1502-76(b)(1)(i) provides that a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If the consolidated return includes the items of a corporation for only a portion of its tax year, items for the portion of the year not included in the consolidated return must be included in a separate return (including the consolidated return of another group).

Section 1.1502-76(b)(1)(ii) provides, in general, that if a corporation becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Section 1.1502-76(b)(2)(i) provides that the returns for the years that end and begin with a corporation becoming (or ceasing to be) a member are separate tax years for all Federal income tax purposes.

In lieu of the general rule of § 1.1502-76(b)(2)(i), which requires a closing of the books, § 1.1502-76(b)(2)(ii) provides that if a corporation is not required to change its annual accounting period or its method of accounting as a result of its change in status as a member of a consolidated group, and an irrevocable election is made under § 1.1502-76(b)(2)(ii)(D), the corporation's items (other than certain "extraordinary items") may be ratably allocated between the periods ending and beginning with its change in status. If this election is made, an equal portion of the corporation's items are allocated to each day of the corporation's original year (the tax year determined without taking § 1.1502-76 into account), except that extraordinary items must be allocated to the day that they are actually taken into account.

Section 1.1502-76(b)(2)(ii)(D)(1) provides that the election to ratably allocate the corporation's items is made in a separate statement filed on or with the returns including the items for the years ending and beginning with the corporation's change in status. Additionally, under § 1.1502-76(b)(2)(ii)(D)(2), each member and the common parent of each affected group must sign and date an agreement providing the items described therein.

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 301.9100-2 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.*, § 1.1502-76(b)(2)(ii)(D)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for New Parent, Old Parent, and Subsidiaries to file the Election, provided that New Parent, Old Parent, and Subsidiaries 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 New Parent, Old Parent, Company Officials, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the taxpayers reasonably relied on a qualified tax professional who failed to make, or advise the taxpayers 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 made, we conclude that New Parent, Old Parent, and Subsidiaries 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, provided that New Parent, Old Parent, and Subsidiaries qualify substantively to file the Election, we grant an extension of time, under § 301.9100-3, for sixty (60) days from the date on this letter for New Parent, Old Parent, and Subsidiaries to file the Election. The New Parent Group and Old Parent Group each must attach a copy of this ruling letter to its relevant returns, or if the consolidated group files its return electronically, a statement must be attached to the return that provides the date and the control number (PLR-109098-15) of this ruling letter.

The above extension of time is conditioned on the New Parent Group's and Old Parent Group's tax liabilities (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 New Parent Group's or Old Parent Group's tax liabilities for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether, in fact, the New Parent, Old Parent, and Subsidiaries qualify substantively to file the Election. In addition, 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 New Parent, Old Parent, Company Officials, and Tax Professional. However, the Director 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(s) 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, 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: