

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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PLR-121970-15
Date:
September 10, 2015

LEGEND

Taxpayer =

Year 1 =

Date 1 =

Company Officials =

Company Employee =

Tax Professional =

Dear :

This letter responds to a letter dated June 19, 2015, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 through 301.9100.3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer and the members of its affiliated group (the "Taxpayer Affiliated Group") to make an election to file a consolidated federal income tax return, with Taxpayer as the common parent, under § 1.1502-75(a)(1) of the Income Tax

Regulations (the "Election") for Year 1. The information submitted in that request is summarized below.

Taxpayer is the common parent of the Taxpayer Affiliated Group. The Taxpayer Affiliated Group intended to elect to file a consolidated income tax return, with Taxpayer as the common parent, for Year 1, but for various reasons, Taxpayer did not timely file the Election. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the Taxpayer Affiliated Group's taxable year for which it seeks to make the Election.

Taxpayer has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in the manner provided in § 1.1502-75(b), to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

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., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer 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 Taxpayer, Company Officials, Company Employee, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional and that the request for relief was filed before the failure to timely 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 affidavits submitted and the representations made, we conclude that Taxpayer 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, an extension of time is granted under § 301.9100-3 until 60 days from the date on this letter for Taxpayer to file the Election by filing a consolidated return, with Taxpayer as the common parent, and attaching a Form 1122 for each of Taxpayer's affiliated subsidiaries for Year 1. Taxpayer must attach a copy of this letter to the return. Alternatively, if such return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to the return that provides the date and control number [PLR-121970-15] of this letter ruling.

The above relief is conditioned on the Taxpayer Affiliated 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 timely made (taking into account the time value of money). No opinion is expressed as to the Taxpayer Affiliated Group's tax liability 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 Taxpayer's Affiliated Group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or 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 return or 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 Taxpayer, Company Officials, Company Employee, 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 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: