

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:3

PLR-103789-18

Date:

March 28, 2018

Legend

Old Parent =

New Parent =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Tax Professional =

Dear _____ :

We respond to a letter dated February 2, 2018, submitted on behalf of New Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension is being requested for New Parent to make an election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the consolidated net operating loss ("CNOL"), for the tax year ending Date 3, of the consolidated group of which Old Parent was the common parent through Date 2 and of which New Parent was the common parent after Date 2 (the "Election"). Additional information was submitted in a letter dated March 15, 2018. The material information submitted for consideration is summarized below.

New Parent was formed on Date 1 under the laws of State A. Prior to Date 1, Old Parent was the common parent of a consolidated group ("the Group"). On Date 2, New Parent acquired 100 percent of the outstanding stock of Old Parent (the "Stock Transfer"). The Stock Transfer qualified as a reverse acquisition pursuant to § 1.1502-75(d)(3). Accordingly, pursuant to § 1.1502-75(d)(3)(i)(b), New Parent became the new common parent of the Group, and pursuant to § 1.1502-75(d)(3)(v), New Parent's tax year closed on Date 2 and New Parent adopted the tax year of Old Parent.

The Group sustained a CNOL in the tax year ended on Date 3. New Parent intended to relinquish the carryback period for the Group's CNOL for the tax year ended on Date 3. The return was timely filed, consistent with a valid election having been made. However, for various reasons, a valid election was not filed. After Date 4, the date the Election was due, it was discovered that a valid election had not been filed. Subsequently, this request was submitted for an extension of time to file a valid election.

New Parent has represented that the Group is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time New Parent requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

We have received representations from appropriate parties that none of the Group's CNOL for the tax year ended on Date 3 has been carried back, nor will be carried back, to a prior consolidated return of the Group nor to a separate return, if any, of any member of the Group.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election under § 172(b)(3) 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 ENTIRE 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 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. 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).

In this case, the time for filing 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 New Parent to file the Election, provided New Parent establishes 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 New Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that New Parent reasonably relied on a qualified tax professional who failed to make, or advise New Parent to make, the Election, 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 circumstances, including the representations made, we conclude that New 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, an extension of time is granted under § 301.9100-1, until 60 days from the date on this letter, for New Parent to file the Election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ending on Date 3, as described above.

The above extension of time is conditioned on the taxpayers’ (New Parent’s and the members of its consolidated group) tax liability (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 taxpayers' 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.

New Parent must file the Election in accordance with § 1.1502-21(b)(3)(i). The Group's return for the tax year ending Date 3, having been filed consistent with a valid election having been made, must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter must be attached to the election statement. Alternatively, if the Group files its returns electronically, New Parent may satisfy this latter requirement by attaching a statement to its return that provides the date on and control number of this letter ruling.

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 and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by New Parent, Old Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the election, penalties and interest that would otherwise be applicable if any, continue to apply.

This letter is directed only to the taxpayer who requested 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
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: