

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
November 20, 1998

Parent =

Sub =

Date Y =

Date A =

Date B =

Company
Official =

Outside
CPA =

Outside
Auditor =

Responsible
Auditor =

Authorized
Representative =

Dear

This responds to your letter dated June 5, 1998, requesting an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for Parent and Sub to make an election to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations, for their taxable year ended on Date Y (the "election"). The material information submitted is summarized below.

Parent was an S corporation formed as a holding company and was inactive until Date X, when it acquired 100% of the stock of Sub. It's S election terminated as a result of the acquisition.

Parent and Sub intended to file an election to file a consolidated return, with Parent as the common parent, beginning with the tax year which ended on Date Y. The election was due on Date A, but for various reasons the election was not filed. On Date B, after the due date of the election, the omission was discovered. Subsequently, this request, for an extension of time to file the election under §§ 301.9100-1 and 301.9100-3, was submitted to the Service. The statute of limitations under § 6501 has not run for Parent's or Sub's taxable year ending on Date Y, any taxable year subsequent to the due date for the election, or any taxable year affected by the election.

Section 1501 of the Internal Revenue Code provides, in part, that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

Section 1.1502-75(a)(1) provides that a group 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 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 filing the common parent's return.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122. Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its

privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by the group for the immediately preceding taxable year.

Under §§ 301.9100-1 and 301.9100-3, the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, under all subtitles of the Code except Subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

- (1) the taxpayer acted reasonably and in good faith; and
- (2) granting relief will not prejudice the interests of the government.

In this case, the time for filing the election is fixed by § 1.1502-75(a)(1). Therefore, the Commissioner has discretionary authority under §§ 301.9100-1(a) and 301.9100-3 to grant an extension of time to file the election provided that Parent and Sub can show they acted reasonably and in good faith for not timely filing the election and provided that the other requirements of §§ 301.9100-1 and 301.9100-3 are met.

Sections 301.9100-1 and 301.9100-3 provide that requests for extensions of time to file an election will be granted when the taxpayer provides evidence (including the affidavits described in § 301.9100-3 (e)) establishing that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Information, affidavits, and representations submitted by Parent, Company Official, Outside CPA, and Authorized Representative explain the circumstances that resulted in the failure to file the election. The information also establishes that tax professionals (Responsible Auditor and Outside Auditor) were responsible for the election and that Parent and Sub relied on them to timely make the election.

Based on the facts and information submitted, including the representations made, we conclude that Parent and Sub have shown they acted reasonably and in good faith with regard to their failure to timely file the election, and further, that the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, an extension of time is granted under §§ 301.9100-1 and 301.9100-3, until 30 days from the date of issuance of this letter, for Parent to file the election (i.e., file a consolidated return, with Parent as the common parent, and attach a Form 1122 for Sub) for their short taxable year ended on Date Y.

The above extension of time to file the late election is conditioned on the taxpayers' (Parent's and Sub's) tax liability 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 filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved, and a determination thereof will be made by the District Director's office upon audit or examination of the federal income

tax returns involved. Moreover, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' liability is lower. Section 301.9100-3(c).

Parent must file a consolidated return for its taxable year ended Date Y and attach thereto the election (a Form 1122, executed on or after the date of this letter granting an extension, for Sub), pursuant to the instructions in § 1.1502-75(b). A copy of this letter should also be attached. However, if Parent has already filed a consolidated return, Parent must then amend that return to attach a copy of the election and this letter.

We express no opinion as to whether in fact Parent and Sub are eligible to file a consolidated return. Furthermore, 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 effects resulting from, filing the election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1(a) we relied on certain statements and representations made by the taxpayers and the taxpayers' officials and representatives. However, the District Director should verify all essential facts and computations. Moreover, notwithstanding that the extension is granted under § 301.9100-1(a) to file the election, any penalties and interest that would otherwise be applicable still apply.

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By _____
Bernita L. Thigpen
Deputy Assistant Chief Counsel (Corporate)