

Internal Revenue Service

Department of the Treasury

Number: **200101008**
Release Date: 1/5/2001
Index Number: 9100.00-00; 1502.76-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:1-PLR-109216-00
Date:
September 28, 2000

In Re:

Legend

Corporation =

Parent =

Subsidiaries =

State A =

Authorized representatives =

Company Official =

f =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

PLR-109216-00

Date G =

Date H =

Date I =

Date J =

We respond to your letter dated April 20, 2000, in which you requested that the Commissioner grant Parent and Subsidiaries an extension of time to make a ratable allocation election (the "Election") under § 1.1502-76(b)(2)(ii) of the Income Tax Regulations for the periods January 1, 1998, through November 16, 1998, and November 17, 1998, through December 31, 1998. Additional information was received in a letter dated August 16, 2000.

Parent is a calendar year taxpayer that uses the accrual method of accounting and was organized under the laws of State A.

Subsidiaries are calendar year taxpayers that use the accrual method of accounting and are wholly owned by Parent.

Prior to Date D, Parent was a wholly owned subsidiary of Corporation. Parent and Subsidiaries, wholly owned subsidiaries of Parent, were included in Corporation's consolidated federal income tax return for the period Date B through Date C when Corporation sold f% (over 20%) of its stock of Parent to an unrelated purchaser. Parent and Subsidiaries then filed their own consolidated return for the period Date D through Date E.

On Date F, Corporation reacquired the f% stock of Parent. However, Corporation did not request a waiver of the five-year prohibition against reconsolidation after disaffiliation under § 1504(a)(3). Therefore, Parent and Subsidiaries could not join in Corporation's consolidated return for the period Date G through Date H. Thus, Parent and Subsidiaries were each required to file a separate return for that period. Nonetheless, Parent and Subsidiaries did not file separate returns, instead, they filed a consolidated return for the entire period from Date I through Date H, which included the period from Date G through Date H. Consequently, Parent did not make Election for the periods from Date I through Date F, and Date G through Date H. On or about Date J, it was discovered that separate returns should have been filed by Parent and Subsidiaries for the period Date G through H, and thus that no Election had been made.

Parent has made the following representations:

- 1) Neither Parent nor any of Subsidiaries are required to change its annual accounting period or method of accounting as a result of the reacquisition of the parent stock by Corporation on Date F.

PLR-109216-00

2) The period of assessments under 6501(a) has not expired for Parent or any of Subsidiaries' taxable years ending Date F or Date H.

Under § 1.1502-76(b)(1)(i), 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).

Under § 1.1502-76(b)(1)(ii), if a corporation ("S") 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.

Under § 1.1502-76(b)(2)(i), the returns for the years that end and begin with S becoming (or ceasing to be) a member are separate tax years for all Federal income tax purposes. The returns are subject to the rules of the Internal Revenue Code applicable to short periods, as if S ceased to exist on becoming a member (or first existed on becoming a member).

In lieu of the general rule of § 1.1502-76(b)(2)(i) requiring a closing of the books, § 1.1502-76(b)(2)(ii) provides that, if S is not required to change its annual accounting period or its method of accounting as a result of its change in status, and an irrevocable election is made under § 1.1502-76(b)(2)(ii)(D), S's items (other than certain "extraordinary items") may be ratably allocated between the two short periods. If this election is made, an equal portion of S's items are allocated to each day of S's original year, except that extraordinary items must be allocated to the day that they are actually taken into account. Under § 1.1502-76(b)(2)(ii)(D), the election to ratably allocate S's items is made in a separate statement filed with the returns including the items for the years ending and beginning with S's change in status.

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.

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. 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

PLR-109216-00

granted when the taxpayer provides evidence to establish 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 was fixed by the regulations (i.e., § 1.1502-76(b)(2)(ii)(D)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file 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 Company Official and Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information establishes that Parent relied on competent tax professionals, that they were aware of all relevant facts, and that they failed to advise Parent to make the Election. The information establishes that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(V).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, subject to the below conditions, we grant an extension of time under § 301.9100-1, until 120 days from the date of issuance of this letter, for Parent to file the Election by filing all returns required to report Parent's and Subsidiaries' items in accordance with the Election and by attaching the statement described in § 1.1502-76(b)(2)(ii)(D) to each return. A copy of this letter should also be attached to each return.

The above extension of time to file the Election is conditioned on the taxpayers' (Parent's and Subsidiaries') tax liability 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 taxpayers' tax liability for the years involved. A determination thereof will be made by the District 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 taxpayer's liability is lower. Section 301.9100-3(c).

No opinion is expressed as to the tax treatment of this case under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the above stated facts that are not directly covered by the above rulings. For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by the taxpayer, its employees and representatives. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interests that would otherwise be

PLR-109216-00

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, a copy of this letter is being sent to the taxpayer and taxpayer's other authorized representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: Ken Cohen
Acting Chief, Branch 3