

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:3 - PLR-112055-00
Date:
October 6, 2000

New Parent =

Former Parent =

Sub 1 =

Sub 2 =

Merger Sub =

Target =

Date 1 =

Date 2 =

b =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Company Official =

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Outside CPA =

This responds to a letter from your authorized representative, dated June 13, 2000, 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 New Parent, Sub 1 and Sub 2 to make an election to file a consolidated federal income tax return, with New Parent as the common parent, under § 1.1502-75 (a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election"), effective for their taxable year ending on Date 4. Additional information was submitted in letters dated August 30, 2000 and September 27, 2000. The material information submitted for consideration is summarized below.

Former Parent, a domestic corporation, was the common parent of an affiliated group of corporations filing a consolidated return with a fiscal year ending Date 1. Former Parent had two subsidiaries, Sub 1 and Sub 2. Merger Sub, a domestic corporation, was a wholly owned subsidiary of Former Parent that was organized for the sole purpose of effecting the transaction described below.

Target, an unrelated domestic corporation, filed its separate corporate income tax return on a fiscal year ending Date 2.

On Date 3, Merger Sub was merged with and into Target (the "Acquisition Merger"). Target survived the Acquisition Merger as a wholly owned subsidiary of Former Parent and Merger Sub went out of existence. The shareholders of Target received approximately b percent (over 50 percent) of the outstanding shares of Former Parent common stock. After the Acquisition Merger and also on Date 3, Target was merged with and into Former Parent in an upstream merger with Former Parent surviving (the "Upstream Merger"). Immediately after the Upstream Merger, Former Parent changed its name to that of New Parent. Sub 1 and Sub 2 remained as subsidiaries of New Parent.

New Parent represents that (1) the Acquisition Merger (viewed independently of the Upstream Merger) qualifies as a reorganization under §§ 368(a)(1)(A) and (a)(2)(E) of the Internal Revenue Code, (2) the Upstream Merger qualifies as a statutory merger under state law, and, if viewed independently of the Acquisition Merger, qualifies as a liquidation under § 332, and (3) the reverse acquisition rule of § 1.1502-75(d)(3) applies to the transaction with the result that the consolidated group of which Former Parent was the common parent terminated on Date 3.

An election under § 1.1502-75(a)(1) to file a consolidated return for the first fiscal year ending after the date of the acquisition (*i.e.*, Date 4) would have been due by Date 5. A Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, for New Parent was filed on Date 5, which extended the due date of filing New Parent's tax return until Date 6. However, the tax return for the fiscal year ended Date 4 was not filed until Date 7.

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New Parent intended to file the Election with New Parent as the common parent of the group beginning with the taxable year that ended on Date 4, but for various reasons the Election was not timely filed. The statute of limitations on assessment under § 6501(a) has not run for New Parent's, Former Parent's, Sub 1's, Sub 2's, or Target's taxable year for which they want to make the Election or for any taxable year that would be affected by the Election had it been timely filed.

Section 1501 provides that an affiliated group of corporations has 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 is 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(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

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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 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), 1.1502-75(b) and 1.1502-75(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for New Parent, Sub 1, and Sub 2 to file the Election, provided New Parent, Sub 1, and Sub 2 show they 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 Outside CPA explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that the request for relief was initiated before the failure to make the Election was discovered by the Internal Revenue Service, that the taxpayers have taken a reporting position that is consistent with making the Election, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that New Parent, Sub 1, and Sub 2 have shown they 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 30 days from the date of issuance of this letter, for New Parent to file the Election (by filing a consolidated return, with New Parent as the common parent, and attaching a Form 1122 for Sub 1 and Sub 2) for their taxable year ending on Date 4.

The above extension of time is conditioned on the taxpayers' (New Parent's, Sub 1's, Sub 2's and Target's) 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 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 taxpayers' liability is lower. Section 301.9100-3(c).

New Parent must file a consolidated return for its taxable year ending on Date 4 and attach thereto the Election (a Form 1122, executed on or after the date of this letter granting an extension, for Sub 1 and Sub 2), pursuant to the instructions in § 1.1502-75 (b). A copy of this letter should also be attached to the return.

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We express no opinion with respect to whether, in fact, New Parent, Sub 1, and Sub 2 qualify 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. Specifically, we express no opinion (1) whether the Acquisition Merger qualifies under §§ 368(a)(1)(A) and (a)(2)(E), (2) whether the Upstream Merger qualifies under § 368(a)(1)(A) or § 332, and (3) whether the transaction qualifies as a reverse acquisition under § 1.1502-75(d)(3). For purposes of granting relief under § 301.9100-1 we relied on certain statements and representations made by New Parent, Outside CPA, and Company Official. However, the District Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,
Associate Chief Counsel (Corporate)

By *Ken Cohen*

Acting Chief, Branch 3