

Tax Professional &
Company Official =

Dear :

This letter responds to a letter dated March 24, 2005, as modified by your letter of July 8, 2005, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under § 1.1502-32(b)(4) to waive loss carryovers from a separate return limitation year (the "Election"). Additional information was submitted in a letter dated July 20, 2005. The material information is summarized below.

Parent is the common parent of a consolidated group that files its Federal income tax return on a calendar year basis. Purchaser is a member of the consolidated group. Purchaser purchased 100% of the stock of Acquired on Date B. At the time of the acquisition, Acquired was the common parent of a consolidated group (the Acquired group). The Acquired group included LossCo, a loss corporation that Acquired purchased on Date A. LossCo had net operating losses available for carryover to taxable years beginning after Date A totaling \$a. The taxpayer has represented that LossCo ceased to continue its business enterprise within two years of Date A and that as a result, LossCo's net operating losses were subject to a § 382 limitation of zero.

Section 1.1502-32(b)(4)(i) provides that if a corporation has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the corporation becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that such an election must be made in a separate statement filed with the consolidated group's return for the year the corporation becomes a member.

The Election was due on Date C, but for various reasons a valid Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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.*, § 1.1502-32(b)(4)(iv). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the 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 Parent and Tax Professional & Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that 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 § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election. A copy of this letter must be attached to the Election.

The above extension of time is conditioned on the Parent group'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 Parent 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. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to the tax 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 § 301.9100-3, we relied on certain statements and representations made by the

taxpayers. 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

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

Sincerely,

Cohen

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

cc: