

**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:B04

PLR-118721-05

Date:

September 30, 2005

Legend

Parent =

Subsidiaries =

First Acquirer =

Second Acquirer =

Year 1 =

Date A =

Date B =  
Date C =  
Date D =  
Date E =  
X =  
Company Official =  
  
Tax Professional =

Dear :

This letter responds to a letter dated March 31, 2005, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to elect under § 1.1502-75(a)(1) to file a consolidated Federal income tax return with its includible subsidiaries (the "Election"). In a letter dated August 15, 2005, Parent requested that the Commissioner waive the application of § 1504(a)(3)(A). This letter ruling does not address Parent's request that the Commissioner waive the application of § 1504(a)(3)(A). This letter ruling only addresses Parent's request for an extension of time to file a consolidated return. The information submitted is summarized below.

Parent was the common parent of an affiliated group that included Subsidiaries. Parent and Subsidiaries (the "Former Group") filed a consolidated Federal income tax return beginning in Year 1. On Date A, First Acquirer purchased all outstanding shares in Parent. The Former Group thus ceased to exist.

Parent and Subsidiaries each filed separate Federal income tax returns for the taxable years between Date A, the date that the Former Group ceased to exist, and Date B.

On Date B, Second Acquirer purchased X% of the outstanding shares of Parent. Parent thus again became the common parent of an affiliated group (the "New Group"), with the New Group including members of the Former Group.

New Group intended to file a consolidated return. An election under § 1.1502-75(a)(1) for New Group to file a consolidated return for the taxable year ending on Date C was due on Date D. However, for various reasons a valid Election was not filed. The period of assessment under § 6501(a) has not expired and will not expire until at least Date E for Parent and Subsidiaries for the taxable year ending on Date C, and for any subsequent years.

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.

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. 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 § 1.1502-75(a)(1) of the Income Tax Regulations. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Subsidiaries to file the Election, provided Parent and Subsidiaries show that 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the 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 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 and Subsidiaries have shown that 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, provided Parent and Subsidiaries qualify substantively to file a consolidated return for the taxable year ending on Date C (taking into account the application of § 1504(a)(3)(A) and any waiver of its application under § 1504(a)(3)(B)), an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Parent and Subsidiaries to file the Election by filing a consolidated return for the taxable year ending on Date C and attaching a Form 1122 for each of the subsidiaries.

The above extension of time is conditioned on Parent's and Subsidiaries' tax liability (if any) being not lower, in the aggregate, for the taxable year for which the Election applies, and all subsequent years, 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 Parent's and Subsidiaries' 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. 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).

This ruling is directed only to the taxpayer 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

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

cc: