

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:5 PLR-120038-98
Date:
March 23, 1999

Parent =

Sub #1 =

Sub #2 =

Former Parent =

Date A =

Date B =

Date C =

Date D =

Date X =

Company Official &
Tax Professional =

Authorized
Representatives =

Dear:

This responds to your Authorized Representatives' October 26, 1998 letter 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 Parent, Sub #1 and Sub #2 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 (hereinafter referred to as "the Election"), effective for their taxable year ending on Date X. Additional information was received in a letter dated January 8, 1999. The material information is summarized below.

Former Parent is the common parent of a consolidated group that has a calendar taxable year and uses the accrual method of accounting (the group includes subsidiaries that are not relevant for purposes of this request). On Date A, Former Parent formed Parent, as an inactive wholly owned subsidiary. During its taxable year ending on Date X, Parent acquired Sub #1 and Sub #2, as wholly owned subsidiaries. On Date B (which is after Parent acquired Sub #1 and Sub #2, and still during Parent's taxable ending on Date X), Parent (and its subsidiaries) became deconsolidated from Former Parent.

Parent (and Sub #1 and Sub #2) intended to file the Election. The Election was due on Date C, but for various reasons it was not filed. On Date D (which is after the due date for the Election), Parent, Sub #1, Sub #2, Company Official & Tax Professional and Authorized Representatives discovered that the Election was not filed. The period of limitations on assessment under § 6501(a) has not expired for Parent's, Sub #1's and Sub #2's taxable year(s) in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

Section 1501 provides 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.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return 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 for 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, 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.

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. Requests for relief under section 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)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent (and Sub #1 and Sub #2) to file the Election, provided Parent (and Sub #1 and Sub #2) shows it (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 & Tax Professionals, and Authorized Representatives explain the circumstances that resulted in the failure to timely file a valid Election. The information also establishes that tax professionals were responsible for the Election, that Parent, Sub #1 and Sub #2 relied on them to timely make the Election, and that 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 made, we conclude that Parent (and Sub #1 and Sub #2) has shown it (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 Parent to file the Election (i.e., file a consolidated return, with Parent as the common parent, and attach a Form 1122 for Sub #1 and Sub #2) for its (their) taxable year ending on Date X.

The above extension of time is conditioned on the taxpayers' (Parent's, Sub #1's, Sub #2's, and Former Parent's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election apply, 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).

Parent must file a consolidated return for its taxable year ending on Date X 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). Parent should clearly state on the return, and each of Sub #1 and Sub #2 should clearly state on the Form 1120 they sign, that they are making a late § 1.1502-75(a)(1) election. A copy of this letter should also be attached to the return.

We express no opinion with respect to whether, in fact, Parent, and Sub #1 and Sub #2 qualify substantively to file a consolidated return (e.g., whether Parent was disaffiliated from From Parent, and whether the requisite voting and value requirements of § 1504 are satisfied). In addition, 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayers. However, the District Director (s) should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to 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.

A copy of this letter is being sent to the first listed authorized representative, pursuant to the power of attorney on file in this office.

Sincerely yours,
Assistant Chief Counsel (Corporate)

by _____
Richard Todd
Counsel to the Assistant Chief
Counsel (Corporate)