

Internal Revenue Service

Department of the Treasury

Number: **200136018**
Release Date: 9/7/2001
Index Number: 9100.20-00;1502.75-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:06-PLR-113143-01
Date:
June 8, 2001

Parent = .

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Company Official =

Outside CPA =

Tax Return Preparer=

This responds to a letter from your authorized representative, dated February 28, 2001, 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 and Subs 1-5 (collectively referred to as "Subs") 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 1. The material information submitted for consideration is summarized below.

Parent and Subs are all calendar year corporations. Parent was formed on Date 2. Thereafter, as a result of a series of transactions, Subs became wholly-owned subsidiaries of Parent. It has been represented that these transactions did not constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3). Sub4 and Sub5 were merged into Sub2 on Date 7.

Parent and Subs intended to file the Election with Parent as the common parent of the group beginning with the taxable year that ended on Date 1. The Election was due on Date 3, but for various reasons the Election was not filed. Sometime after Date 4, Parent's newly hired controller became aware that the Date 1 tax return had not been filed. On Date 5 (which is after the due date for the Election), a consolidated federal income tax return was filed for Parent and Subs. However, the Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax return (Form 1122) was not timely filed on behalf of any of Subs. On Date 6, Parent's management was informed by Outside CPA that the Election was not timely filed.

The statute of limitations on assessment under § 6501(a) has not expired for the Parent's or any of Subs' taxable years for which they want to make the Election or for any taxable year that would be affected by the Election.

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. A corporation is deemed to have joined in the making of such return if it files a Form 1122. Section 1.1502-75(b).

Section 1.1502-75(a)(1) provides that a group that 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 (in the manner provided in § 1.1502-75(b)) 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.

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 § 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)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and Subs to file the Election, provided Parent and Subs 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 Parent, Company Official, Tax Return Preparer and Outside CPA explain the circumstances that resulted in the failure to timely file the Election. The information also establishes that a tax professional was responsible for the Election, that Parent and Subs relied on him 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 Subs 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 Parent to file the Election (by amending its consolidated return for the year ending Date 1 by filing new Forms 1122, executed on or after the date of this letter by each subsidiary). A copy of this letter should be attached to the Forms 1122.

The above extension of time is conditioned on the taxpayers' (Parent's and Subs')

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 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).

We express no opinion with respect to whether, in fact, Parent and Subs 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. For purposes of granting relief under § 301.9100-1 we relied on certain statements and representations made by Parent, Parent's authorized representative, Tax Return Preparer and Company Official. However, all essential facts should be verified. 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Ken Cohen
Senior Technician Reviewer, Branch 3