

Internal Revenue Service

Department of the Treasury

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Refer Reply To:

CC:CORP:B05-PLR-135683-01

Date:

October 1, 2001

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Ultimate Parent =

Authorized
Representatives =

Company Official 1 =

Company Official 2 =

Company Official 3 =

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Date 1 =
 Date 2 =
 Date 3 =
 Date 4 =
 Date 5 =
 Date 6 =
 Date 7 =
 Date 8 =
 Date 9 =
 State A =
 State B =
 Country X =
 Year 1 =
 Z =
 Q =
 R =

This responds to your letter dated June 27, 2001 submitted on behalf of Parent requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.1502-75(a)(1) of the Income Tax Regulations (the "Election"). The extension is being requested for Parent, Sub 1, Sub 2, and Sub 3 (collectively the "Taxpayers") to make an election to file a consolidated federal income tax return, with Parent as the common parent, effective for the Year 1 taxable year. Additional information was received in a letter dated August 10, 2001. The material information is summarized below.

On Date 1, Ultimate Parent, a Country X corporation, formed Parent as a domestic partnership under the laws of State A. Parent was formed as a financing and holding company domiciled in State B. On Date 2, Parent filed a Form 8832 to elect to be treated as an association taxable as a corporation, which was effective beginning on

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Date 3. On Date 3, Ultimate Parent formed Sub 1, a domestic corporation formed under the laws of State A and domiciled in State B, and subsequently transferred 100 % of the Sub 1 stock to Parent. On Date 4, Sub 2 was formed under the laws of State A by Ultimate Parent to facilitate the acquisition of Sub 3, an unrelated publicly traded domestic corporation domiciled in State B. On Date 5, Sub 2 acquired approximately z% (at least 80%) of the stock of Sub 3. On Date 6, Sub 3 was merged into Sub 2 with Sub 2 remaining as the surviving corporation. Immediately after the merger, Sub 2 changed its name to Q. Subsequently, Sub 2 has changed its name to R.

Each of the Taxpayers have taxable years ending on Date 7. The Taxpayers intended to file the Election for the Year 1 taxable year. The Election was due on Date 8, but for various reasons the Election was not filed. In addition, no income tax returns were filed for the members of the proposed consolidated group on a separate company basis. The period of limitations on assessment under § 6501(a) has not expired for the Taxpayers' Year 1 taxable year, the taxable year in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed. Further, it is represented that: (1) a consolidated return for the Parent consolidated group was filed during the week of Date 9 and it was disclosed on such return that relief was being requested under § 301.9100-3 to make such election, (2) the applicable taxable year(s) has (have) not been examined and (3) the Service had not discovered that the Election was not timely filed prior to the filing of this request for relief.

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 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. See § 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of

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§ 301.9100-2. 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. See § 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 the Taxpayers to file the Election, provided that they 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 Authorized Representatives, Company Official 1, Company Official 2 and Company Official 3 explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that 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).

Based on the facts and information submitted, including the representations that have been made, we conclude that the Taxpayers have established that they acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under § 301.9100-1 until 45 days from the date on this letter, for Parent to file the Election, by amending its consolidated return for the Taxpayers' Year 1 taxable year, by filing a new Form 1122, executed on or after the date on this letter and attaching thereto a copy of this letter.

The above extension of time is conditioned on the Taxpayers' 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 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. See § 301.9100-3(c).

We express no opinion with respect to whether, in fact, the Taxpayers qualify substantively to file a consolidated return. 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

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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 Director 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.

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

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