

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:CORP:1 - PLR-147962-01  
Date:  
January 3, 2002

LEGEND

Purchaser =

Target =

Parent =

Date A =

Date B =

Date C =

Date D =

F =

Company Officials =

Dear:

This letter responds to a letter dated September 4, 2001, submitted on behalf of Purchaser, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting an extension to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback period for the consolidated net operating loss ("CNOL") of the consolidated group of which Target was the common parent for the taxable year ending on Date A (sometimes hereinafter referred to as the "Election"). Additional information was submitted in letters dated November 13 and December 6, 2001. The material information is summarized below.

Purchaser is the common parent of an affiliated group that files a consolidated federal income tax return. Purchaser is a lower tier subsidiary of Parent.

Prior to Date A, Target was the common parent of an affiliated group that filed a consolidated Federal income tax return. At that time, Target was a widely held public corporation. For the short taxable year ending on Date A, Target and its subsidiaries sustained a CNOL in the amount of \$F.

On Date A, Purchaser acquired all of the outstanding Target stock in exchange for cash and Parent stock, pursuant to the agreement entered into by the parties. Target then merged into Purchaser.

Purchaser intended to file the Election. The Election was due on Date B, but for various reasons a valid Election was not filed. The federal income tax return for Target's short taxable year ending on Date A was filed on Date C, consistent with a valid election to relinquish the CNOL having been made.

On Date D, which is after Date B, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Purchaser's or Target's consolidated groups' taxable years in which the acquisition occurred, the taxable years 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.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may elect to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled: "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) provides that the statement must be signed by the common parent and filed with the group's income tax return for the consolidated return year in which the CNOL arises.

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 the regulations (i.e., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for the filing of the Election, provided Purchaser shows that 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 Purchaser and Company Officials explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Purchaser, as the successor of Target, reasonably relied on a qualified tax professional who was aware of all relevant facts, 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 Purchaser has shown that 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 § 301.9100-1, until 45 days from the date on this letter, for the filing of the Election for the Target short taxable year ending on Date A, as described above.

The above extension of time is conditioned on (1) the filing, within 120 days of the date on this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election, and (2) the taxpayers' (Purchaser's consolidated group's and Target's consolidated 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 Federal income 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).

Purchaser, as Target's successor, should file the Election in accordance with § 1.1502-21(b)(3)(i). Target's returns must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter must be attached to the election form.

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 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 your authorized representative.

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

cc: