

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:

January 14, 2004

Legend

Acquiring =

Parent =

Target =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-165472-03

Date 1 =

Date 2 =

Company Official =

Tax Manager =

Dear

This letter responds to a letter dated November 13, 2003, submitted on behalf of Acquiring, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Acquiring is requesting an extension to elect under Treas. Reg. § 1.1502-75(a)(1) to file a consolidated Federal income tax return with its includible subsidiaries (the "Election") for its taxable year ending on Date 2. Additional information was received in a letter dated December 19, 2003. The information submitted is summarized below.

Acquiring is a corporation. Prior to Date 1, Parent owned all of the stock of Target, which owns all of the stock of Sub 1, which owns all of the stock of Sub 2 and Sub 3. On Date 1, Acquiring acquired from Parent all of the stock of Target.

An election under § 1.1502-75(a)(1) to file a consolidated return for the taxable year ending on Date 2 was required to be filed by the due date of Acquiring's return (including extensions). Acquiring and its subsidiaries intended to file a consolidated return for the taxable year ending on Date 2, but for various reasons the Election was not timely filed. The statute of limitations on assessment under § 6501(a) has not expired for either Acquiring's or its subsidiaries' taxable years for which they want to make the Election or for any taxable years that would be affected by the Election had it been timely filed.

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

PLR-165472-03

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 the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Acquiring and its subsidiaries to file the Election, provided Acquiring and its 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 Acquiring, Company Official, and Tax Manager explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Acquiring reasonably relied on a qualified tax professional who failed to make, or advise Acquiring 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 Acquiring and its 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, an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Acquiring and its subsidiaries to file the Election by filing a consolidated return for its taxable year ending on Date 2. Form 1122 and a copy of this letter should be attached to the return.

The above extension of time is conditioned on Acquiring's and its subsidiaries' tax liability (if any) being not lower, in the aggregate, for all years to which the Election

PLR-165472-03

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 Acquiring's and its 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).

We express no opinion with respect to whether, in fact, Acquiring, Target, Sub 1, Sub 2 and Sub 3 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 § 301.9100-3 we relied on certain statements and representations made by Acquiring, Company Official, and Tax Manager. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Acquiring.

Sincerely,

Ken Cohen

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