

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200429010**

Release Date: 7/16/04

Index Number: 1502.75-00, 9100.20-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03 – PLR-168484-03

Date:

April 08, 2004

Foreign Parent =

Parent =

Holding =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

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Sub 5 =

Sub 2A =

Sub 2B =

Sub 2C =

Sub 2D =

Date 1 =

Year 1 =

Company Official =

Dear

We respond to your November 25, 2003, letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in letters dated January 15, March 10, and April 2, 2004. The extension is being requested for Parent, Holding, Sub 1, Sub 2, Sub 2A, Sub 2B, Sub 2C, Sub 2D, Sub 3, Sub 4, and Sub 5 (hereinafter, excluding Parent, "Subsidiaries") to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) (hereinafter referred to as ("the Election")), effective for the group's taxable year ending on Date 1. The material information is summarized below.

Foreign Parent expanded its U.S. operations in Year 1 and to facilitate this expansion, Foreign Parent caused Parent to file an election under § 301.7701-3 to be treated as a corporation for Federal income tax purposes. Other corporations were

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organized or acquired to create Parent and Subsidiaries. The taxpayer represents that Parent and Subsidiaries are eligible to file a consolidated return with Parent as the common parent.

Parent and Subsidiaries intended to file the Election. An election under § 1.1502-75(a)(1) to file a consolidated return for the taxable year ending Date 1 was required to be filed by the due date of Parent's return (including extensions), but for various reasons the Election was not timely filed. The period of limitations on assessment under § 6501(a) has not expired for Parent's or any of Subsidiaries' taxable years for which they want to make the Election or for any taxable year 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 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 Parent and Subsidiaries to file the Election, provided 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 Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid

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Election. The information establishes that Parent reasonably relied on qualified tax professionals who failed to make, or advise Parent to 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 Subsidiaries 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 § 301.9100-3, until 90 days from the date on this letter, for Parent and Subsidiaries to file the Election by filing a consolidated return for its taxable year ending Date 1, including Forms 851 and 1122. A copy of this letter should be attached to the return.

The above extension of time is conditioned on the taxpayers' (Parent's and Subsidiaries') 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 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, Parent and Subsidiaries 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 Parent and Company Official. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, penalties and interest may apply. No opinion is expressed as to the type or amount of any penalties and interest.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this ruling letter be attached to the Federal consolidated income tax return for the taxable year ending Date 1.

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Pursuant to the power of attorney on file in this office, copies of this letter have been sent to your authorized representatives.

Sincerely,

Ken Cohen

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

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cc: