

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-132407-04

Date: October 6, 2004

October 06, 2004

Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

U.S. Seller =

U.S. Seller Group =

Foreign Acquirer =

Tax Preparer =

Date 1 =

Date 2 =

Date 3 =

Month =

Dear \_\_\_\_\_,

This letter responds to a letter dated May 24, 2004, requesting, on behalf of Parent and Subsidiary 1 through Subsidiary 5 (“Subsidiaries”), an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and Subsidiaries to file an election under § 1.1502-21(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses (“CNOLs”) attributable to Parent and Subsidiaries, the portion of the carryback period for which Parent and Subsidiaries were members of another group (sometimes hereinafter referred to as the “Election”). All citations in this letter to regulations under § 1.1502-21 are to regulations in effect for taxable year ending Date 3. The material information submitted in the request and subsequent correspondence is summarized below.

Prior to Date 1, Parent owned all of the stock of Subsidiaries. Parent and Subsidiaries were members of U.S. Seller Group and were included in the consolidated Federal income tax return of U.S. Seller. On Date 1, Foreign Acquirer purchased 100% of the outstanding stock of Parent from U.S. Seller. Parent and Subsidiaries were included in the consolidated Federal income tax return of U.S. Seller for the short period ending on Date 1.

The Date 1 acquisition was made pursuant to a stock purchase agreement between Foreign Acquirer and U.S. Seller. The terms of the stock purchase agreement precluded Parent or Subsidiaries from carrying back, in respect to any consolidated, combined or unitary tax return, any item of loss, deduction or credit which arises in any taxable period ending after Date 1 to any taxable period on or before Date 1.

Parent and Subsidiaries filed a consolidated Federal income tax return for the short period from Date 2 through Date 3 (the “Short Period Return”). Parent and

Subsidiaries intended to file the Election. Section 1.1502-21(b)(3)(ii)(B) required the Election to be filed with the Short Period Return, but for various reasons a valid election was not filed with such return. In Month, after the due date of the Short Period Return, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's and Subsidiaries' or U.S. Seller's taxable years in which the Election should have been filed or any subsequent taxable years.

It has been represented that no loss attributable to Parent and Subsidiaries has ever been available for carryback to any tax return other than that of U.S. Seller Group and that no loss attributable to Parent and Subsidiaries available for carryback to U.S. Seller Group has ever been used nor will be used by U.S. Seller Group.

Section 1.1502-21(b)(3)(ii)(B) provides that if one or more members of a consolidated group become members of another consolidated group, the acquiring consolidated group may elect to relinquish, with respect to all CNOLs attributable to the member, the portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under § 172.

The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(ii)(B) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification numbers of members]." Section 1.1502-21(b)(3)(ii)(B) provides that the statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member, and it must be signed by the common parent and each of the members to which it applies.

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. Section 301.9100-3 provides extensions of time for making certain elections that do not meet the requirements of § 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. 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)(ii)(B)). 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 Parent and Subsidiaries 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, Subsidiaries, U.S. Seller, and Tax Preparer explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent and Subsidiaries reasonably relied upon a qualified tax professional who failed to make, or advise Parent and Subsidiaries to make, the Election, and that the government will not be prejudiced if relief is granted. Section 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiaries have established 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 § 301.9100-3, until 45 days from the date on this letter, for Parent and Subsidiaries to file the Election regarding the relinquishment, with respect to all CNOLs attributable to Parent and Subsidiaries, of the portion of the carryback period for which Parent and Subsidiaries were members of another group, as described above.

The above extension of time is conditioned on Parent's and Subsidiaries' tax liability (if any) not being 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 Parent's consolidated group's 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 Parent's consolidated group's tax liability is lower. Section 301.9100-3(c).

Parent and Subsidiaries should file the Election in accordance with § 1.1502-21(b)(3)(ii)(B). Parent's returns must be amended to attach the election statement required by § 1.1502-21(b)(3)(ii)(B). A copy of this letter should be attached to the election statement.

No opinion is expressed as to the tax consequences of filing 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 resulting from, filing the Election late which 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, Parent's representative, and U.S. Seller. However, all essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

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

cc: