

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:B06

PLR-138567-05

Date:

November 18, 2005

LEGEND:

Parent =
EIN:

Sub =
EIN:

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Company A =

x% =

Company Official =

A =

B =

C =

D =

Dear :

This letter responds to your letter dated July 21, 2005, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a request for an automatic waiver, pursuant to § 1504(a)(3)(B) of the Internal Revenue Code and Rev. Proc. 2002-32, 2002-1 C.B. 959, with respect to the inclusion of Sub in Parent's Year 2 consolidated federal income tax return (the "Election"). The material information, which included several affidavits, submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that files a federal income tax return on a consolidated, calendar-year basis (the "Parent Group"). Sub, prior to its deconsolidation from Parent Group, was wholly owned by Parent and was included in the Parent Group's Year 1 consolidated return.

On Date 1, Parent transferred $x\%$ of the stock of Sub to Company A, which is indirectly owned by the Parent but is not a member of the Parent Group. The transfer was part of an overall restructuring of the Parent Group (the "Restructuring Transaction"). As a result of the Restructuring Transaction, Sub ceased to be a member of the Parent Group.

Upon subsequent review of the Restructuring Transaction, in connection with the preparation of the Parent Group's Year 1 consolidated return, it was determined that Sub was inadvertently deconsolidated from the Parent Group. In Year 2, Sub engaged in a recapitalization transaction that resulted in Sub rejoining the affiliated group.

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group and such corporation ceases to be a member of such group, the corporation (and any successor of such corporation) may not thereafter be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of the affiliated group.

Section 1504(a)(3)(B) provides that the Secretary may waive the application of section 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Section 3 of Rev. Proc. 2002-32 grants a waiver under

§ 1504(a)(3)(B) to any corporation described in § 4.01 of the revenue procedure that requests an automatic waiver by complying with the requirements of the revenue procedure, including a requirement that a statement containing certain information be attached to a timely filed (including extensions) consolidated return for the taxable year that includes the date on which the corporation most recently became a member of the affiliated group.

The Election was due on Date 2. However, for various reasons, a valid election was not timely filed. Parent has therefore applied for an extension of time under § 301.9100-3 to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's or Sub's taxable years in which the reaffiliation occurred or for any years that would have been affected by the Election had it been timely made.

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 301.9100-1(b) provides that a regulatory election includes an election whose due date is prescribed by a revenue procedure. 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 Rev. Proc. 2002-32. Therefore, the Commissioner has discretionary authority to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government. Section 301.9100-3(a).

Information, affidavits, and representations submitted by Parent, Company Official, and individuals A, B, C, and D explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Parent failed to make the Election in a timely manner because of intervening events beyond its control, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(ii).

Based on the facts and information submitted, we conclude that Parent has shown 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, Parent is granted an extension of time until 45 days from the date on this letter for Parent to file the Election. A copy of this letter must be attached to the Year 2 consolidated return.

The above extension of time is conditioned on the Parent group's and Sub'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 Parent Group's or Sub's tax liability for the years involved. A determination thereof will be made by the Service 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).

We express no opinion whether Sub qualifies for a waiver of the application of § 1504(a)(3)(A). In addition, we express no opinion as to the tax consequences of filing the Election late that are not specifically set forth in the above ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. 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 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.

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,

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

cc: