

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05-PLR-117891-00
Date:
March 9, 2001

Re:

Legend:

Parent =

Sub #1 =

Sub #2 =

Sub #3 =

Sub #4 =

Sub #5 =

Sub #6 =

Sub #7 =

Sub #8 =

Authorized
Representatives =

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Company Official =

Director =

Foreign Advisor =

Tax Professional 1 =

Tax Professional 2 =

Date A =

Date B =

Date C =

State =

Year =

This responds to your letter, dated September 11, 2000, on behalf of the above named taxpayers requesting an extension of time under § 301.9100-1 through § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested by Parent and Sub #1 through Sub #8 (collectively the "Taxpayer"). Taxpayer requests an extension to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as the "Election"), effective for the taxable year ended on Date B. Additional information was received in letters dated December 20, 2000, January 23, 2001, February 1, 2001, February 2, 2001 and February 5, 2001. The information submitted in the request and subsequent correspondence is summarized below.

On Date A, Parent was formed as a State corporation. During Year, Parent formed four first tier subsidiaries, each owned at 100% by Parent, and four second tier subsidiaries. Each second tier subsidiary is owned at 90% by a first tier subsidiary. Ten percent of each second tier subsidiary is owned by an entity outside of the proposed consolidated group. Parent and Sub #1 through Sub #8 have fiscal years ending on Date C.

Parent and Sub #1 through Sub #8 intended to file the Election for the taxable year ended on Date B. The Election was due on October 15, 1998, but for various reasons the Election was not filed. In addition, no income tax returns were filed for the proposed consolidated group or for any member of the group on a separate company

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basis.

The statute of limitations under § 6501 has not run for Parent, or for each of Sub #1 through Sub #8, for its taxable year ending on Date B or for any subsequent taxable years.

Section 1501 provides that an affiliated group of corporations has the privilege of making a consolidated return with respect to the income tax imposed by Chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

Section 1.1502-75(a)(1) provides that a group that 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.

Section 1.1502-75(b) provides that a corporation consents to filing a consolidated return for the first consolidated year by joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return if it files a Form 1122.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and attached to the consolidated return for such year. Form 1122 is not required for the taxable year if a consolidated return was filed by the group for the immediately preceding taxable year.

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.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of

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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 regulatory 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., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and Sub #1 through Sub #8 to file the Election, provided that they 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 Director, Foreign Advisor, Company Official, Tax Professional 1, Tax Professional 2 and Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information also establishes that tax professionals were responsible for the Election, that Parent and Sub #1 through Sub #8 relied on them to timely make the Election, and granting an extension will not prejudice the interests of the government.

Based on the facts and information submitted, including the representations that have been made, we conclude that Taxpayer has established that it 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 § 301.9100-1 until 30 days from the date of issuance of this letter, for Parent to file the Election, i.e., to file a consolidated return, and attach thereto a Form 1122 and a copy of this letter for Taxpayer's taxable year ended on Date B.

The above extension of time is conditioned on the Taxpayer's tax liability 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 Taxpayer'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 the Taxpayer's liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, Parent and Sub #1 through Sub #8 qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or 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 effects resulting from, filing the

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Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1(a), we have relied on certain statements and representations made by Director, Foreign Advisor, Company Official, Tax Professional 1, Tax Professional 2 and Authorized Representatives. However, upon audit, all essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-1(a) to file the Election, penalties and interest, if any, that would otherwise be applicable shall still apply.

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

Sincerely yours,
Associate Chief Counsel (Corporate)

By: Debra Carlisle

Chief, Branch 5