

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200425001**

Release Date: 6/18/04

Index Number: 1504.00-00, 9100.22-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02 – PLR-101152-04

Date:

March 04, 2004

Parent =

Sub #1 =

Sub #2 =

Foreign Sub =

Country X =

Date A =

Date B =

Date C =

Year 1 =

Year 2 =

Year 3 =

Tax Professional =

Company Official =

Dear

This letter responds to a letter dated December 19, 2003, 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 Code and Rev. Proc. 2002-32, 2002-1 C.B. 959, of the application of § 1504(a)(3)(A) with respect to each of Sub #1 and Sub #2. The request for waiver of the application of § 1504(a)(3)(A) is hereinafter sometimes referred to as the "Election." Additional information was received in a letter dated February 13, 2004. The material information is summarized below.

Parent is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis. Sub #1 and Sub #2 were included in the Parent group consolidated return beginning in Year 1. Each of Sub #1 and Sub #2 is a domestic holding company that owns shares in foreign subsidiaries. During Year 2, the Parent group undertook a restructuring pursuant to which certain foreign subsidiaries in the Parent group were placed under Foreign Sub, a Country X entity. Although Sub #1 and Sub #2 are domestic corporations, on Date A their shares were mistakenly placed under Foreign Sub as well. Sub #1 and Sub #2 were thus disaffiliated from the Parent affiliated group.

Sub #1 and Sub #2 filed separate federal income tax returns for the period beginning after their disaffiliation from the Parent group and for subsequent years, including Year 3.

On Date B (a date in Year 3, and a date less than sixty months following the year of the disaffiliation of Sub #1 and Sub #2), Foreign Sub elected to be disregarded as an entity separate from its owner for United States tax purposes, see § 301.7701-3, and Sub #1 and Sub #2 therefore reaffiliated with the Parent group.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984, then with respect to periods after such cessation, such corporation (and any successor of such corporation) may not 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 such affiliated group. Section 1504(a)(3)(B)

authorizes the Secretary to waive the application of § 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 the 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, and a requirement that the corporation be included in that consolidated return.

The Election was due on Date C, the due date (including extensions) of the Year 3 Parent group consolidated federal income tax return, but for various reasons a valid Election was not filed. After the due date for the Election, Parent learned that such an election was available and had not been timely 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, Sub #1's, or Sub #2's taxable years in which the reaffiliation occurred or for any years that would have been affected by the Election had it been timely filed.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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 Rev. Proc. 2002-32. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to

timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the interests of 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 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, an extension of time is granted under § 301.9100-3, until 120 days from the date on this letter, for Parent to file a consolidated federal income tax return for the Parent group for Year 3, amended to include Sub #1 and Sub #2 from the date of their reaffiliation and the information required by Rev. Proc. 2002-32 with respect to each of Sub #1 and Sub #2. Additionally, Sub #1 and Sub #2 must file amended returns for their short periods preceding their reaffiliation. A copy of this letter must be attached to all such returns.

The above extension of time is conditioned on the Parent group's, Sub #1's, and Sub #2'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, Sub #1's, or Sub #2's tax liability for the years involved. A determination thereof will be made by the applicable 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' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether Foreign Sub qualified to elect to be disregarded as an entity separate from its owner, or as to whether either Sub #1 or Sub #2 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 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 resulting from, filing 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 the taxpayers. However, the Director should verify all essential facts. 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(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

Ken Cohen

Senior Technician Reviewer, Branch 3

Office of Associate Chief Counsel (Corporate)

cc: