

Internal Revenue Service

Number: **200546013**

Release Date: 11/18/2005

Index Number: 9100.22-00

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:B04

PLR-118723-05

Date:

August 05, 2005

Legend

Parent =

Subsidiaries =

First Acquirer =

Second Acquirer =

Year 1 =

Year 2 =
Date A =
Date B =
Date C =
X =
Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated March 31, 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, as common parent of an affiliated group, is requesting an extension of time to file a request for a waiver, pursuant to Rev. Proc. 2002-32, 2002-1 C.B. 959, of the application of § 1504(a)(3)(A) of the Code for the Year 2 tax year. The request for an extension to file for a waiver of the application of § 1504(a)(3)(A) is hereinafter sometimes referred to as the "Election." Additional information was received in letters dated April 4, 2005, and May 6, 2005. The material information is summarized below.

Parent was the common parent of an affiliated group that included Subsidiaries. Parent and Subsidiaries (the "Former Group") filed a consolidated Federal income tax return beginning in Year 1. On Date A, First Acquirer purchased all outstanding shares in Parent. The Former Group thus ceased to exist.

Parent and Subsidiaries each filed separate Federal income tax returns for the tax years between Date A, the date that the Former Group ceased to exist, and Date B.

On Date B (a date less than sixty months following the year the Former Group ceased to exist), Second Acquirer purchased X% of the outstanding shares of Parent. Parent thus again became the common parent of an affiliated group (the "New Group"), with the New Group including members of the Former Group.

Section 1504(a)(3)(A) of the Internal Revenue 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 successor of such common parent) before the sixty-first month beginning after the 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.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver under § 3.01 of the revenue procedure, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request filed by the common parent in accordance with Rev. Proc. 2002-1, or the similar revenue procedure applicable to a later year. The letter ruling request must be submitted by the common parent of the affiliated group of which the deconsolidated corporation becomes a member before the due date (including extensions) of the consolidated return for the tax year with respect to which the waiver is requested.

The Election was due on Date C, the due date (including extensions) of the Year 2 consolidated Federal income tax return. However, for various reasons, a valid Election was not filed. After the due date for the Election, Parent learned that such an election had not been properly 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 the New Group's Year 2 or any future year's Federal income tax returns 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, that the interests of the government will not be prejudiced if the letter ruling request is granted, and that the taxpayers requested this relief before the IRS discovered the failure to make the regulatory election. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown that 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 60 days from the date on this letter, for Parent to file a letter ruling request under Rev. Proc. 2002-32 requesting a waiver of application of § 1504(a)(3)(A). A copy of this letter must be attached to that request.

We express no opinion as to whether any corporation qualifies for a waiver of the application of § 1504(a)(3)(A). In addition, we express no opinion 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.

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)