

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B05-PLR-112564-01

Date:

May 11, 2001

### Legend

Parent =

Company Official =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State X =

State Y =

State Z =

Business A =

b =

Dear :

This responds to your letter dated February 21, 2001, requesting an extension of time, under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election (the "Election") under § 1.1502-75(a)(1) of the Income Tax Regulations. The extension is being requested for Parent, Sub 1, Sub 2, and Sub 3 (Sub 1, Sub 2, and Sub 3 are hereinafter collectively referred to as the "Subsidiaries") to make an election to file a consolidated federal income tax return, with Parent as the common parent, effective for their taxable year that ended on Date 1. Additional information was received in letters dated April 12, 2001, and May 9, 2001. The material information submitted is summarized below.

Parent was formed as a State X corporation on Date 2 (a date in parent's taxable year ending Date 1). Subsequently, during that same taxable year, Parent acquired b% (at least 80%) of Sub 1, a State X corporation, in a transaction not constituting a reverse acquisition within the meaning of § 1.1502-75(d)(3). Parent is a holding company for Subsidiaries. Subsidiaries are engaged in Business A. Sub 2 is a State Y corporation and is wholly owned by Sub 1. Sub 3 is a State Z corporation and is wholly owned by Sub 1.

Parent and the Subsidiaries intended to file the Election with Parent as the common parent of the group beginning with the taxable year that ended on Date 1. The Election was due on Date 3, but for various reasons the Election was not filed. The period of limitations on assessments under § 6501(a) has not expired for the taxable year in which the acquisition occurred, the taxable year in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed. Further, it is represented that: (1) a consolidated return for the Parent consolidated group was filed on Date 4 and it was disclosed on such return that relief was being requested under § 301.9100-3 to make such election, (2) the applicable taxable year(s) has (have) not been examined and (3) the Service has not discovered that the Election was not timely filed.

Section 1.1502-75(a) provides that a group which 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 during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)) 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 the filing of the common parent's return.

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 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 regulations (i.e., § 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent (and the Subsidiaries) to file the Election, provided Parent and the Subsidiaries show that they acted reasonably and in good faith, that the requirements of §§ 301.9100-1 through 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to file the Election. The information submitted establishes that the Service has not discovered that the Election had not been filed, and that the Parent and Subsidiaries filed their return as if the Election was validly made. The information also establishes that a competent tax professional was responsible for the Election and was aware of all relevant facts, that Parent and the Subsidiaries relied on this tax professional to make the Election timely, and that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent (and the Subsidiaries) have shown that they acted reasonably and in good faith in failing to file the Election, the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 30 days from the issuance of this letter, for Parent to file the Election by amending its consolidated return for the year ending Date 1 by filing a new Form 1122, executed on or after the date of this letter. A copy of this letter should be

attached to the Form 1122.

The above extension of time is conditioned on the taxpayers' (i.e., Parent's and the Subsidiaries') 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 filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit or examination 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 taxpayers' liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, Parent and the Subsidiaries qualify substantively to file a consolidated return (e.g., whether the requisite voting and value requirements of § 1504 are satisfied). 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, 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 § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable shall still apply.

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

A copy of this letter is being sent to the first listed authorized representative, pursuant to a power of attorney on file in this office.

Sincerely yours,  
Associate Chief Counsel (Corporate)

By: *Ken Cohen*  
Senior Technician Reviewer  
Branch 3