

PLR-116030-03

Dear

This letter responds to a letter dated March 7, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The request for extension of time concerns an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback period for the consolidated net operating loss (CNOL) of the consolidated group of which Taxpayer1 is the common parent for Tax Year2. Additional information was submitted in letters dated May 16 and July 2, 2003.

The material information submitted for consideration is summarized below.

Taxpayer1, the common parent of a consolidated group of corporations, uses an accrual method of accounting on a calendar year basis. Pursuant to a reverse acquisition on the last day of Tax Year1, Taxpayer1 became the common parent of the group of which Taxpayer2 was previously the common parent (Taxpayer2 group). Prior to this reverse acquisition, Taxpayer1 was the common parent of a different consolidated group (Taxpayer1 group). Taxpayer1 intended to relinquish the entire carryback period for the Taxpayer2 group's CNOL on its return for Tax Year2. The election was to be filed with the Taxpayer2 group's return for Tax Year2. However, for various reasons a valid election was not timely filed. In Month (which is after the due date for the consolidated return for Tax Year2), it was discovered that a valid election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year(s). Taxpayer1 has represented that none of the CNOL for the Taxpayer2 group for Tax Year2 was attributable to a corporation that filed (or was required to file) a separate return (including a consolidated return of a different consolidated group) at any time during the carryback period, with one exception: A portion of the CNOL for the Taxpayer2 group for Tax Year2 was attributable to a corporation or corporations that were members of the Taxpayer1 group for Tax Year1 or earlier tax years. However, none of the CNOL attributable to such corporation or corporations was or will be carried back to prior years.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may elect to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) provides that the statement must be signed by the common parent and filed with the group's income tax return for the consolidated return year in which the CNOL arises.

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Pursuant to § 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 the regulations (i.e., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer1 to file the election, provided Taxpayer1 establishes 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 Taxpayer1 and Tax Professional explain the circumstances that resulted in the failure to timely file the valid election. The information establishes that Taxpayer1 reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer1 to make, the election, and that the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v), -3(c).

Based on the facts and information submitted, including the representations that have been made, we conclude that Taxpayer1 has established 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 § 301.9100-3, until 45 days from the date on this letter, for Taxpayer1 to file the election with respect to the relinquishment of the entire carryback period for the CNOL for Tax Year2, as described above.

Taxpayer1 should file the election by filing the statement described in § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement.

The above extension of time is conditioned on the Taxpayer2 group's tax liability, if any, not being lower, in the aggregate for all years to which the election applies, than it would have been if the election had been made timely (taking into account the time value of money). No opinion is expressed as to the Taxpayer2 group's tax liability for the years involved. Further, no opinion is expressed as to the Federal income tax

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effect, if any, if it is determined that the Taxpayer2 group's liability is lower. Section 301.9100-3(c).

No opinion is expressed 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 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 Taxpayer1 and its representatives. However, all of the essential facts must be verified. 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. A copy of this letter must be attached to any income tax return to which it is relevant.

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

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

Sincerely,

Ken Cohen

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