

**Internal Revenue Service**

**Department of the Treasury**

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:CORP:6-PLR-126530-03  
Date:  
September 30, 2003

Legend

Taxpayer =

Corp 1 =

Corp 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Tax Professional =

State A =

Dear

This letter responds to a letter dated April 14, 2003, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file 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 Taxpayer was the common parent for the tax year ended Date 1. Additional information was received in a letter dated May 12, 2003. The material information is summarized below.

Taxpayer is a State A corporation and was the common parent of its consolidated group for the tax year ended Date 1. On Date 2, Corp 1, a wholly owned subsidiary of Taxpayer, liquidated into Taxpayer. In addition, on Date 2, Corp 2 purchased all of the stock of Taxpayer. Taxpayer became a member of Corp 2's consolidated group.

Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for the tax year ending Date 1. The return, and all other relevant returns, including but not limited to prior consolidated returns of Taxpayer's consolidated group, was filed on Date 3, consistent with a valid election having been made. However, for various reasons, a valid election was not filed. On Date 4 (which is after Date 3), it was discovered that a valid election was not 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 Taxpayer's consolidated group's taxable years in which the election should have been filed, or any subsequent taxable years.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may elect to relinquish the carryback period with respect to a CNOL for any consolidated return year. The election is 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.

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.

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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. 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 Taxpayer to file the election, provided Taxpayer 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 Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer 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 Taxpayer 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 45 days from the date on this letter, for Taxpayer to file the election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ended Date 1, as described above.

Taxpayer should file the election by filing the statement described in § 1.1502-21(b)(3)(i). Taxpayer's returns must be amended to attach the election statement. A copy of this letter should be attached to the election statement.

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

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

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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 Taxpayer. 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 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*

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

cc: