

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B1

PLR-133829-04

Date:

August 23, 2004

In Re:

Legend:

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Foreign Parent =

LLC1 =

Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
A% =  
B% =  
Company Official =

Dear :

This letter responds to a letter submitted on behalf of Parent, dated June 17, 2004, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent and Sub4 to file an election to apportion part of the Sub1 Subgroup § 382 limitation to Sub4 under § 1.1502-95(c). The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group (the "Parent Consolidated Group"). All of the outstanding stock of Parent is owned by Foreign Parent. Parent has filed a consolidated federal income tax return since the date of its incorporation. Parent acquired all of the stock of Sub1 on Date 1 (the "Sub1 Acquisition"). Immediately prior to the Sub1 Acquisition, Sub1 owned all of the stock of Sub2, Sub2 owned all of the stock of Sub3, and Sub3 owned all of the stock of Sub4. Also prior to the Sub1 Acquisition, Subs 2-4 were members of an affiliated group of which Sub1 was the common parent (the "Sub1 Subgroup") and joined Sub1 in the filing of consolidated federal income tax returns. From the date of the Sub1 Acquisition through Date 3, all of the members of the Sub1 Subgroup were members of the Parent Consolidated Group and were included in the filing of Parent's consolidated federal income tax return.

On Date 2, Sub5 was formed as a holding company to facilitate the initial public offering (the "IPO") of Sub4 and other members of the Parent Consolidated Group. In connection with the IPO, all of the stock of Sub4 and other assets were contributed by

members of the Parent Consolidated Group to Sub5. Immediately after the IPO, which occurred on Date 3, members of the Parent Consolidated Group held approximately A% (less than 80%) of the outstanding shares of Sub5's common stock, and Sub5 and its subsidiaries (including Sub4) ceased to be members of the Parent Consolidated Group. Sub5 became the common parent of a new affiliated group and elected to file a consolidated federal income tax return with the other members of its group (the "Sub5 Consolidated Group").

On Date 5, almost 2 years after the IPO, LLC1, a limited liability company that is disregarded as an entity separate from Parent, its sole member, for federal income tax purposes, purchased shares of Sub5's stock (the "Sub5 Purchase") which increased the ownership of Sub5's common stock by members of the Parent Consolidated Group to approximately B% (more than 80%). Thus, after the Sub5 Purchase, and pursuant to a waiver of the application of § 1504(a)(3) granted pursuant to Rev. Proc. 2002-32, 2002-1 C.B. 959, former members of the Sub5 Consolidated Group (including Sub4) were again includible in the consolidated federal income tax returns filed by the Parent Consolidated Group.

The Sub1 Acquisition, which was consummated on Date 1, resulted in an ownership change with respect to Sub1 within the meaning of § 382(g). After such ownership change, the ability of the Sub1 Subgroup to offset taxable income arising in taxable years after the ownership change with pre-change losses was limited on an annual basis under § 382(b) (the "Sub1 § 382 Limitation").

The management of Parent, Sub1, and Sub5 expected that, after the IPO, the remainder of the Sub1 Subgroup would continue to generate taxable losses, and that Sub4 (as well as members of the Sub5 Consolidated Group) would generate taxable income. Under § 1.1502-95(c), the common parent of a consolidated group may elect to apportion all or part of a subgroup § 382 limitation to a former member or loss subgroup. The election to apportion all or part of a subgroup § 382 limitation is made following the procedures set forth in § 1.1502-95(f). The election was required to be filed with Parent's federal income tax return for its tax year ending Date 4. However, for various reasons, Parent and Sub4 failed to make the Election in a timely manner.

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. 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., § 1.1502-95(f)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Sub4 to file the Election, provided Parent and Sub4 show they 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 government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent and Sub4 reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, a valid 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 and Sub4 have shown they 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 Parent and Sub4 to file the Election. The election is to be filed with the Director who has jurisdiction over Parent's returns. A copy of this letter should be attached to the Election.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its consolidated group and Sub5 and the members of its consolidated group) 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 taxpayers' tax liability for the years involved. A determination thereof will be made by the 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' liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects 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 Parent and Company Official under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still 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 a power of attorney on file in this office, a copy of this letter is being sent to Parent and Parent's authorized representative.

Sincerely,

*Ken Cohen*

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

cc: