

**Internal Revenue Service**

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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:B05  
PLR-110234-07

Date:  
April 27, 2007

LEGEND

Old Parent =

Company =

State A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated 23 February 2007, submitted on behalf of Company. Company is requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Company and Old Parent to make a ratable allocation election (the "Election") under § 1.1502-76(b)(2)(ii) of the Income Tax Regulations. Additional information was submitted in letters dated 19 March and 20 April 2007. The material information submitted for consideration is summarized below.

Old Parent was a calendar year domestic C corporation. In Year 1, up until Date 1, Old Parent was the common parent of an affiliated group, including Company, that filed a consolidated Federal income tax return. Old Parent and Company maintained their books on the accrual method.

On Date 1, Old Parent merged into Company in a downstream merger ("Merger") with Company as the surviving corporation, pursuant to the laws of State A. Company states that it acquired the assets and assumed the liabilities of Old Parent in the Merger and that the Merger constituted a corporate reorganization within the meaning of § 368(a)(1) of the Internal Revenue Code. As a result of the Merger, the consolidated group that included Company and Old Parent ceased to exist.

Old Parent was a holding company and did not engage in any significant activity. Subsequent to the Merger, up until Date 2, Company continued its operations in substantially the same manner as it had done prior to the Merger.

On Date 2, a short period of time after Date 1, in a transaction separate from the Merger, Company was itself acquired by an unrelated party.

The Election was required to be filed with Old Parent's income tax return for its tax year ending Date 1 and with Company's tax return for its tax year ending on Date 2. However, for various reasons, Old Parent and Company failed to make a valid election. Subsequent to Date 3 (the last date for timely filing the election for the period ending on Date 1), it was discovered that a valid election had not been filed. Thereafter, 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 either the taxable year of Company or the taxable year of Old Parent for which the Election should have been filed, or for any subsequent taxable year.

Under § 1.1502-76T(a), the consolidated return of a group must be filed on the basis of the common parent's tax year.

Under §1.1502-76(b)(1)(i), a consolidated return must include the common parent's items of income, gain, deduction, loss and credit, for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If the consolidated return includes the items of a corporation for only a portion of its tax year, items for the portion of the year not included in the consolidated return must be included in a separate return.

Under § 1.1502-76(b)(1)(ii), if a corporation becomes or ceases to be a member during a consolidated return year, it ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Under § 1.1502-76(b)(2)(i), the returns for the years that end and begin with the corporation becoming (or ceasing to be) a member are separate tax years for all Federal income tax purposes.

In lieu of the general rule of § 1.1502-76(b)(2)(i) which requires a closing of the books, § 1.1502-76(b)(2)(ii) provides that, if the corporation is not required to change its annual accounting period or its method of accounting as a result of its change in status, and an irrevocable election is made under § 1.1502-76T(b)(2)(ii)(D), the corporation's items (other than certain "extraordinary items") may be ratably allocated between the periods. If this election is made, an equal portion of the corporation's items are allocated to each day of the corporation's original year (the tax year determined without taking § 1.1502-76 into account), except that extraordinary items must be allocated to the day that they are actually taken into account. Under §1.1502-76T(b)(2)(ii)(D), the election to ratably allocate the corporation's items is made in a separate statement filed on or with the returns including the items for the years ending and beginning with the corporation's change in status.

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 Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 it is established that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the Government's interests. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e. § 1.1502-76T(b)(2)(ii)(D)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Old Parent and Company to file the Election, provided Old Parent and Company establish that 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.

Information, affidavits, and representations submitted by Company, Tax Professional, and Company Official explain the circumstances that resulted in the failure to timely file a valid election. The information establishes: (i) that Old Parent and Company reasonably relied on a qualified tax professional who failed to make, or advise either Old Parent or Company to make, the election; (ii) that prior to filing this request for a ruling (23 February 2007), there was no communication between the Internal Revenue Service and the taxpayers as to this “ratable allocation” election; and (iii) 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 affidavits submitted and the representations that have been made, we conclude that Company has established that it and Old Parent 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 60 days from the date on this letter, for Old Parent and Company to file the Election.

The Election must be filed in accordance with § 1.1502-76T(b)(2)(ii)(D) by Old Parent and Company filing all returns required so as to report Old Parent’s and Company’s items in accordance with the Election and by attaching the statement described in § 1.1502-76T(b)(2)(ii)(D) to each return. Under § 1.1502-76T(b)(2)(ii)(D), the election to ratably allocate the items should be made in a separate statement entitled, “THIS IS AN ELECTION UNDER § 1.1502-76(b)(2)(ii) TO RATABLY ALLOCATE THE YEAR’S ITEMS OF [Company] EIN: [xx-xxxxxxx].”

In addition, a copy of this letter (PLR-110234-07) should be attached to the Election statement. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-110234-07) of this ruling letter.

The above extension of time is conditioned on the taxpayers’ (Old Parent’s consolidated group’s and Company’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 made timely (taking into account the time value of money). No opinion is expressed as to any taxpayer’s tax liability for the years involved. A

determination thereof will be made 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' tax liability, in the aggregate, 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 particular, we express no opinion with respect to: (i) whether the Merger did in fact constitute a § 368(a)(1) corporate reorganization or as to the date on which it occurred; (ii) whether Old Parent and Company were members of a consolidated group; and (iii) the tax effect or consequences of the Date 2 acquisition of Company.

Furthermore, we express no opinion as to the tax effects or consequences of any late filing of the Election and/or the income tax returns 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 return or 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 Company, Company Official and Tax Professional under penalties of perjury. However, all essential facts must be verified. Moreover, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any otherwise applicable penalties and interest continue to 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 with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Ken Cohen*

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