Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
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Refer Reply To:
CC:CORP:B05
PLR-152440-10
Date:
February 15, 2011

In Re:

Legend

Parent =

Date 1 =

Date 2 =

X =

Company Official =

Tax Professional =

Dear

This letter responds to a letter dated December 16, 2010, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time to elect an extended carryback period (the "Election") for a consolidated net operating loss ("CNOL") incurred in the taxable year ending Date 2

(the "Year 2 CNOL"). The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that joined in filing a consolidated return for U.S. federal income tax purposes (the "Parent Group"). Parent seeks to carry back the Year 2 CNOL X years, to its taxable year ending on Date 1, under § 172(b)(1)(H)(i).

Parent was required to file the Election to carry back the Year 2 CNOL to its taxable year ending on Date 1. The Election was due on the due date (with extensions) of the Parent Group's consolidated income tax return for the tax year ending Date 2, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, 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 the Parent Group's consolidated income tax return for the taxable year in which the Year 2 CNOL was incurred or any subsequent taxable year.

Section 172(b)(1)(A)(i) of the Internal Revenue Code generally permits a taxpayer to carry back a net operating loss to each of the 2 taxable years preceding the taxable year of the NOL.

Section 172(b)(1)(H)(i) of the Internal Revenue Code permits a taxpayer to elect to carry back an applicable net operating loss to each of the 3, 4, or 5 taxable years preceding the taxable year of the applicable NOL, in lieu of the 2-year period provided by § 172(b)(1)(A)(i). Section 172(b)(1)(H)(ii) provides that the term "applicable net operating loss" (applicable NOL) means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

Section 172(b)(1)(H)(iii) provides that the election under § 172(b)(1)(H) shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. The election is irrevocable and, in general, may be made only with respect to one taxable year.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Section 1.1502-21(b) provides that losses taken into account in determining a CNOL may be carried to other taxable years (whether consolidated or separate) only under paragraph (b) of § 1.1502-21.

Section 1.1502-21(b)(1) provides that net operating loss carryovers and carrybacks to a taxable year are determined under the principles of § 172 and § 1.1502-21.

Section 1.1502-21T(b)(3)(v)(A)(*1*) provides that a consolidated group can elect an extended carryback period pursuant to § 172(b)(1)(H) with regard to a CNOL arising in a taxable year ending after December 31, 2007 and beginning before January 1, 2010.

Rev. Proc. 2009-52, 2009-49 I.R.B. 744, provides when and how a taxpayer may make an election under § 172(b)(1)(H). Section 4.01(2) of Rev. Proc. 2009-52 provides that the common parent of a consolidated group makes the election for the group. Sections 4.01(3) and 4.01(4) of Rev. Proc. 2009-52 permit the election to be made for consolidated taxpayers by attaching a statement to the original or amended consolidated return for the taxable year of the applicable CNOL or by attaching a statement to a claim for a tentative carryback adjustment on Form 1139. Sections 4.01(3)(b) and 4.01(4)(b) of Rev. Proc. 2009-52 require the election, regardless of the manner in which made, to be filed no later than the due date (including extensions) for filing the return for the taxpayer's last taxable year beginning in 2009.

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). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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).

The election by a consolidated group to extend the carryback period under § 172(b)(1)(H) for a CNOL is a regulatory election. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes to the satisfaction of the Commissioner that 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent 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, provided the Parent Group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

Parent should file the Election under § 172(b)(1)(H)(i) to carry back the Year 2 CNOL to its taxable year ending on Date 1 on Form 1120X, Amended U.S. Corporation Income Tax Return, according to the procedures set forth in Rev. Proc. 2009-52. A copy of this letter must be attached to the Form 1120X. If Parent files Form 1120X electronically, Parent may satisfy the requirement of attaching a copy of this letter by attaching a statement to the Parent Group's amended return that provides the date and control number (PLR-152440-10) of this letter ruling.

The above extension of time is conditioned on the Parent 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 timely made (taking into account the time value of money). We express no opinion as to the Parent Group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved. Further, we express no opinion as to the federal income tax effect, if any, if it is determined that the Parent Group's tax 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 item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. 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 Internal Revenue Code or 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 this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition,

notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable 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 the 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 Associate Chief Counsel
(Corporate)

cc: