

**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:1

PLR-155898-05

Date:

February 16, 2006

LEGEND:

Parent =

Parent's Successor =

Electing Sub =

Sub 1 =

\$W =

\$X =

\$Y =

Z =

Year =

Date 1 =

Date 2 =

Date 3 =

Company Official 1 =

Company Official 2 =

Dear :

This letter responds to a letter dated October 31, 2005, 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 (by Parent's Successor) to file an election to apportion part of the consolidated § 382 limitation to Sub 1 under § 1.1502-95(c) (hereinafter referred to as the "Election"). Additional information was received in subsequent correspondences dated December 20, 2005, December 21, 2005, February 1, 2006, February 7, 2006 and February 8, 2006. In a separate letter ruling dated February 14, 2006, Control Number PLR-155890-05, an extension of time was granted for Parent and Electing Sub to restore value from Electing Sub to Parent under §1.382-8(h). The relief granted in this letter ruling is predicated on Parent and Electing Sub restoring value as described in that letter. The material information submitted for consideration is summarized below.

In Year, Parent owned all of the outstanding stock of Sub 1 with which it joined in the filing of a consolidated Federal income tax return. On Date 1, Parent experienced a § 382 ownership change. At the time of the ownership change, the consolidated group had "pre-change consolidated attributes", as defined in § 1.1502-91(e)(1), of \$W. After the ownership change, the ability of the consolidated group to offset taxable income arising in taxable years after the ownership change with pre-change consolidated attributes was limited on an annual basis under § 382(b) ("§ 382 limitation").

On Date 2, Parent's Successor, a non-includible corporation and sole owner of Parent, liquidated Parent and the consolidated group terminated on that date. As a result, Sub 1 ceased to be a member of the consolidated group effective at the end of the day, with pre-change consolidated attributes of \$X apportioned to it under § 1.1502-21(b)(2). The consolidated group had net operating losses for the Year taxable year and for the

taxable year ending Date 2; therefore, Parent had a carryover of the unused consolidated § 382 limitation for those years. Parent's value immediately before the ownership change (after the restoration of value from Electing Sub) was \$Y. Even though the sum of the unused consolidated § 382 limitation (the adjustment element (see § 1.1502-95(c)(2)(i)(B)) plus the value element (see § 1.1502-95(c)(2)(i)(A)) for the taxable year ending Date 3 greatly exceeded the pre-change consolidated attributes of Parent, Parent failed to make an election under § 1.1502-95(c) to apportion part of the consolidated § 382 limitation to Sub 1. As a result, the consolidated § 382 limitation was deemed to have been fully apportioned to Parent pursuant to § 1.1502-95(c)(5). Parent now requests an extension of time to elect to allocate Z% of both the adjustment element and the value element to Sub 1.

The election to apportion all or part of a consolidated § 382 limitation is made following the procedures set forth in § 1.1502-95(f). The Election was required to be filed with the consolidated Federal income tax return for the tax year ending Date 2. However, for various reasons, Parent 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 (by Parent's Successor) to file the Election, provided it shows that its actions were reasonable 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's Successor, Company Official 1 and Company Official 2 explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent's Successor reasonably relied on a qualified tax professional who failed to make, or advise Parent's Successor to make, a valid Election, the request for relief was filed before the failure to make the

Election was discovered by the Internal Revenue Service, and 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 representations made, we conclude that Parent (by Parent's Successor) 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 that Parent and Electing Sub elect to restore value to Parent as described in PLR-155890-05, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent (by Parent's Successor) to file the Election to allocate Z% of both the adjustment element and the value element to Sub 1. A copy of this letter must be attached to the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Parent Successor's, and Sub 1'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). 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 particular, we express no opinion with respect to whether an ownership change occurred; whether Parent and Sub 1 were members of a consolidated group; or as to values or the amount of attributes of any corporation. 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's Successor, Company Official 1 and Company Official 2 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 ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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