

being requested for Parent and its affiliated subsidiaries (the "Parent Group") to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (the "Election"), for the taxable year ending Date 2. The material information provided in that letter is summarized below.

On Date 1, Parent, through Sub 1, its wholly-owned subsidiary, acquired 100% of the outstanding stock of an unrelated corporation, Corp 1. Before Corp 1 was acquired, Corp 1 filed consolidated returns with its own affiliated subsidiaries (the "Corp 1 Group"). As a result of Parent acquiring Corp 1, the Corp 1 Group terminated at the end of the day on Date 1. The members of the Corp 1 Group then became members of the Parent Group.

Prior to the taxable year ending Date 2, the Parent Group did not file a consolidated Federal income tax return. An election for the Parent Group to file a consolidated income tax return, with Parent as the common parent, for the taxable year ending Date 2 was due on the last day prescribed by law (including extensions of time) for the filing of Parent's return. Parent intended to file the Election, but for various reasons a valid Election (i.e., the filing of the consolidated return) was not filed by the due date of Parent's return. 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 Corp 1 Group's taxable year ending Date 1, the Parent Group's taxable year ending Date 2, or any subsequent taxable year. Parent has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief (taking into account any qualified amended return within the meaning of § 1.6664-2(c)(3)).

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with § 1.1502-75(b) of the regulations, to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

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 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).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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 the 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 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 that the Parent Group qualifies substantively to file a consolidated return for the applicable taxable year, we grant an extension of time, under § 301.9100-3, for sixty (60) days from the date on this letter for Parent to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each of its affiliated subsidiaries for its taxable year ending Date 2).

The above extension of time is conditioned on the taxpayers' (Parent's and the members of Parent 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.

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.

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.

The rulings contained in this letter are based upon information and representations submitted by Parent, Company Official, and Tax Professional and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Moreover, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, 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.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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