



Tax Reduction Letter

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Private Letter Ruling 8429036

April 16, 1984

This is in reply to a letter dated November 9, 1983, submitted on your behalf by your authorized representative in which a ruling was requested under section 1.9100-1(a) of the Income Tax Regulations. An additional submission dated January 3, 1984, also was received in regard to this matter. Specifically, it has been requested that relief be granted under section 1.9100-1(a) of the regulations so that an election to file a consolidated federal income tax return under section 1.1502-76(a)(1) of the regulations will be considered to have been timely made for the short year ended January 31, 1982.

On * * * A acquired all of the outstanding stock of B in a transaction that is represented to qualify as a reverse acquisition under section 1.1502-75(d)(3)(i) of the regulations. At that time, it was decided to file a consolidated federal income tax return and C was engaged to prepare the consolidated group's tax returns and all appropriate extensions.

Due to an admitted misinterpretation of section 1.1502-75(d)(3)(i) of the regulations, C believed that B and not A was the nominal parent of the consolidated group. Therefore, C prepared and filed two requests for timely extensions to file the consolidated group's income tax return (respectively Form 7004 and 7005) under B's name and using B's taxable year. Also C, due to an oversight, answered "no" to the question on Forms 7004 and 7005 that asks whether the application also covers subsidiaries to be included in a consolidated return.

In * * * C realized that under the reverse acquisition rules A was the nominal parent. However, C believed that the requests for timely extensions that had been filed were effective and did properly extend the period preceding the date that the consolidated return was due to October 15, 1982.

On October 15, 1982, a consolidated return was filed showing A as the common parent of the affiliated group. Reported in this return was B's income for the period February 1, 1981, through January 31, 1982, and A's income for the period * * * through January 31, 1982.

Due to subsequent questions in regard to the 1982 tax return, C consulted D on * * *. D was a national CPA firm. D recommended on * * * that A submit an application under section 1.9100-1(a) of the regulations for relief in respect to tax under subtitle A of the Internal Revenue Code. This A did on the theory that the extension of time to make the election had not been granted to A but to B.

Under section 1.9100-1(a) of the regulations, the Commissioner has discretion, upon a showing of good cause by a taxpayer, to grant a reasonable extension of the time fixed by the regulations

to make an election or application for relief in respect to tax under subtitle A of the Code, provided:

- (1) a time for making the election or application is not expressly prescribed by law;
- (2) the request for the extension is filed with the Commissioner within a period of time the Commissioner considers reasonable under the circumstances; and
- (3) it is shown to the Commissioner's satisfaction that granting the extension will not jeopardize the Government's interests.

Rev.Proc. 79-63, 1979-2 C.B. 578, concerns requests for extensions of time for making an election or application for relief pursuant to section 1.9100-1(a) of the regulations. It sets forth information and representations that must be furnished by the taxpayer and some factors that will be taken into consideration in determining whether an extension will be granted. These factors are (1) intent of the taxpayer; (2) due diligence of the taxpayer; (3) prejudice to the interests of the Government; (4) prompt action by the taxpayer; and (5) statutory and regulatory objectives.

Based on the facts and information submitted and the representations made, it is held that "good cause" has been demonstrated for the granting of relief under section 1.9100-1(a) of the regulations. Therefore, we will consider the consolidated federal income tax return, filed on October 15, 1982 by A, to have been timely filed for the taxable year ended January 31, 1982 for only the purpose of A's election to file consolidated returns.

This ruling only pertains to the granting of the application for relief under section 1.9100-1(a) of the regulations. No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and regulations which may be applicable thereto or the tax treatment of any conditions existing at the time of or effects resulting from the transaction, which are not specifically set forth by the above ruling.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to your designated representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

John W. Holt

Director, Corporation Tax Division