

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:3-PLR-109527-00
Date:
August 29, 2000

Re:

Legend

Parent =

Sub2 =

Sub1 =

Date A =

x =

y =

Date B =

Buyer =

Business X =

Date C =

Parent Official =

This responds to your authorized representative's letter dated April 28, 2000, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the

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Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a statement of allowed loss under § 1.1502-20(c)(3) of the Income Tax Regulations ("the Election"), with respect to the disposition of its stock in Sub2, which occurred during its taxable year ending on Date A. Additional information was received in letters dated May 5 and July 13, 2000. The material information submitted is summarized below.

Parent is the common parent of a consolidated group that has a calendar taxable year and uses the accrual method of accounting. Parent owned all the stock of Sub1. Parent owned $x\%$ of the common stock and all of the voting preferred stock of Sub2. Sub1 owned the remaining $y\%$ (significantly over 80%) of the common stock of Sub2. Sub1 and Sub2 were included in Parent's consolidated Federal income tax return (along with other subsidiaries that are not relevant with respect to this request). On Date B (which is within Parent's taxable year ending on Date A), Parent sold all of its stock in Sub2 to Buyer, an unrelated corporation. Sub2 is engaged in Business X. It is represented that (1) Parent recognized a loss on the sale; (2) Parent deducted the loss on its return for its taxable year ending on Date A; (3) an election under § 338(h)(10) of the Internal Revenue Code was not made with respect to the sale; and (4) the amount Parent deducted was determined in accordance with § 1.1502-20(c).

Section 1.1502-20(a)(1) provides that, as a general rule, no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary. Section 1.1502-20(a)(2) defines a disposition as any event in which gain or loss is recognized, in whole or in part, and, thus, includes a sale.

Section 1.1502-20(c)(1) provides that the amount of loss disallowed under § 1.1502-20(a)(1) and the amount of basis reduction under § 1.1502-20(b)(1) with respect to a share of stock shall not exceed the sum of the amounts set forth in §§ 1.1502-20(c)(i), (ii), and (iii). Section 1.1502-20(c)(3) provides that § 1.1502-20(c)(1) applies only if a statement of allowed loss is filed with the taxpayer's return for the year of disposition.

Parent, as the common parent of the consolidated group, was required by § 1.1502-20(c)(3) to make and attach the Election to its return for the year of disposition in order to deduct the amount, if any, of the loss not disallowed under § 1.1502-20(a)(1). On Date C, Parent filed its return for its tax year ending on Date A, the taxable year in which the sale occurred. The Election was required to be attached to the return. However, for various reasons the Election was not attached to the return or otherwise filed. Subsequently, this request, under § 301.9100-1, for an extension of time to file the Election was submitted to the Service. The statute of limitations under § 6501 has not run for the Parent's taxable year that included the sale, or any subsequent year or year affected by the Election, had it been timely filed.

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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.

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 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.*, § 1.1502-20(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent shows 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 and Parent Official explain the circumstances that resulted in the failure to file timely the valid Election. The information establishes that the request for relief was initiated before the failure to make the regulatory 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).

Based on the facts and information submitted, including the representations made, we conclude that Parent 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, an extension of time is granted under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's, Sub1's, and Sub2'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 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 District Director's office upon audit of the federal income tax returns involved.

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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).

Parent must amend its return for its tax year ending on Date A, to attach to the return the Election and information set forth in § 1.1502-20(c)(3). In addition, Parent should attach a copy of this letter to the amended return.

We express no opinion as to (1) whether Parent recognized a loss on the sale of the Sub2 stock; (2) if a loss was recognized on the sale, the amount of the loss; and (3) if a loss was recognized on the sale, the amount of the loss disallowed under § 1.1502-20(a) (if any), and the amount of the loss allowed as a deduction under § 1.1502-20(c)(1) (if any).

In addition, no opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or tax effects or consequences resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by the taxpayer, its employees, and representatives. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, 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 with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel (Corporate)

by: Ken Cohen

Ken Cohen
Acting Chief, Branch 3