

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:2-PLR-120455-00
Date:
January 17, 2001

LEGEND:

- Parent =
- Subsidiary =
- Buyer =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Company Official 1 =
- Company Official 2 =
- Authorized Representatives =

Dear:

This is in response to your authorized representative's letter dated October 11, 2000, requesting an extension of time under §§ 301.9100-1 through -3 of the 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 sale of its stock in Subsidiary during its taxable year ending on Date 1. Additional information was received in a letter dated December 12, 2000. The material information submitted is summarized below.

Parent is the common parent of a consolidated group that has a fiscal year ending on Date 2. Parent uses the accrual method of accounting. Subsidiary was

wholly owned by Parent and was included in Parent's consolidated federal income tax return (along with other subsidiaries that are not relevant to this request).

On Date 1, Parent sold all of its Subsidiary stock to Buyer, an unrelated party. It is represented that (1) an election under § 338(h)(10) of the Internal Revenue Code was not made with respect to the sale; (2) Parent recognized a loss on the sale; (3) Parent deducted the loss on its timely filed return for the fiscal year ending on Date 1; 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 the 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. A sale is therefore a "disposition" within the meaning of § 1.1502-20(a)(2).

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 an amount determined by a specified formula. 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. On Date 3, Parent timely filed its return for its tax year ended on Date 1, the taxable year in which the sale occurred. However, for various reasons the Election was not attached to the return or otherwise filed. On Date 4, which was after the due date for the year ended Date 1, it was discovered that the Election had not been filed. Subsequently, this request was submitted to the Service, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's taxable year that included the sale, or any taxable year that would have been affected by the Election had it been timely filed.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election 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 was established 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 that 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 Company Official 1, Company Official 2, and one of Parent's Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information establishes that Company Official 2, a competent tax professional, was responsible for the Election and was aware of all relevant facts, and that Parent relied on Company Official 2 to timely make the Election. The information also establishes that Parent requested relief before the failure to make the Election was discovered by the Internal Revenue Service and that Parent had filed its return as if the Election had been made and consistent therewith. Finally, the information establishes that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(i) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 have been 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 consolidated group's and Subsidiary's) tax liability 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 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 total tax liability (of the consolidated group or Subsidiary) is lower. Section 301.9100-3(c). In addition, the extension to file the Election is also conditioned on Parent's sale of its Subsidiary stock to Buyer being an arm's length transaction for fair market value.

Parent must amend its return for its tax year ending on Date 1, to attach to the return the Election and the 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's sale of the Subsidiary stock was at fair market value; (2) whether Parent recognized a loss on the sale of the Subsidiary stock, and if so, the amount thereof; or (3) if a loss was recognized on the sale, the amount of the loss disallowed.

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 and 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 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, all essential facts are subject to verification. 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 ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,
Associate Chief Counsel (Corporate)
By: Edward S. Cohen
Chief, Branch 2