

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06 – PLR-145207-03

Date:

November 17, 2003

Parent =

Subsidiary 1 =

Purchaser =

Date A =

Date B =

Date C =

Day X =

Month 1 =

Year 1 =

Company Official =

\$M =

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Dear _____ :

We respond to a letter dated July 25, 2003, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent to make an election under § 1.1502-20T(i)(4) of the Income Tax Regulations, to apply the provisions of § 1.337(d)-2T for Parent's consolidated taxable year ending on Date A (sometimes hereinafter referred to as the "Election"). Additional information was received in a letter dated October 29, 2003. The information submitted for consideration is summarized below.

Parent is the common parent of the Parent consolidated group filing consolidated returns with a fiscal year ending Day X. In Month 1 of Year 1, Parent purchased Subsidiary 1 for \$M. No election under § 338 of the Internal Revenue Code was made with respect to this purchase. Parent's stock in Subsidiary 1 became worthless on Date B.

The Taxpayer seeks to apply § 1.337(d)-2T pursuant to an Election under § 1.1502-20T(i)(4). The Election was due on Date C, but for various reasons, a valid Election was not made. 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 Parent's consolidated group's taxable years in which the Election should have been filed, or for any subsequent years.

Section 1502 states that the Secretary shall prescribe regulations as deemed necessary to determine the tax liability of any affiliated group of corporations making a consolidated return and of each corporation, both during and after the period of affiliation. Sections 1.337(d)-2T and 1.1502-20T permit certain losses recognized on sales of members' stock.

Section 1.1502-20T(i)(2)(ii) allows a taxpayer to elect to apply § 1.337(d)-2T with respect to a disposition or deconsolidation of a member's stock prior to March 7, 2002.

Section 1.1502-20T(i)(4) provides the time and manner of making elections under § 1.1502-20T(i)(2) with respect to the dispositions and deconsolidations of the stock of a subsidiary by a member of a consolidated group before March 7, 2002. Section 1.1502-20T(i)(4) provides that taxpayers can meet the requirements of that section by filing the requisite statement (the statement entitled "Allowed Loss under Section [Specify Section under Which Allowed Loss is Determined] Pursuant to Section 1.1502-20T(i)") as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before March 7, 2002.

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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.

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., § 1.1502-20T(i)(4)). 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 and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that 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).

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, an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Parent to file the Election pursuant to § 1.1502-20T(i)(4) of the Income Tax Regulations with respect to the loss on the worthlessness of the Subsidiary 1 stock for its taxable year ending on Date A.

WITHIN 90 DAYS OF THE DATE ON THIS LETTER, Parent must amend its return for its taxable year ending Date A, to include the Election described in § 1.1502-20T(i)(4). A copy of this letter must be attached to the return.

The above extension of time is conditioned on Parent's consolidated group'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 applicable Director's office

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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' tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax 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 § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interests that would otherwise be applicable, if any, continue to apply.

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.

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, copies of this letter are being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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.

Sincerely,

Ken Cohen

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

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cc: