

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:B03 – PLR-101153-04

Date:
April 14, 2004

Legend

Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Date C =

Company Official =

Tax Professional =

Dear

This letter responds to your letter dated December 22, 2003, 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 file an election under §1.1502-20T(i)(4) of the Income Tax Regulations to apply the provisions of §1.337(d)-2T to determine the allowable loss sustained upon the sale of the stock of a subsidiary member of its consolidated group on Date A. Additional information was received in a letter dated February 27, 2004. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group. Parent owned all of the stock of Sub1, which owned all of the stock of Sub 2. On Date A, Sub 1 sold, at a loss, all of the stock of Sub 2 in a taxable transaction.

Parent intended to file an election, under §1.1502-20T(i)(4), to determine the allowable loss on this sale under the provisions of §1.337(d)-2T. The election was due on Date B, but for various reasons a valid election was not filed. On Date C (which is after Date 2), it was discovered that a valid election was not filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under §6501(a) has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year(s).

Section 1.1502-20T(i)(2)(ii) provides, in general, that in the case of a disposition of stock of a subsidiary before March 7, 2002, a consolidated group may determine the amount of the member's allowable loss by making an election to apply the provisions of §1.337(d)-2T.

Section 1.1502-20T(i)(4) of the regulations provides, in general, that for dispositions of stock on or before March 7, 2002, an election to determine allowable loss by applying the provisions described in §1.1502-20T(i)(2)(i) or (ii) is made by including the statement described in §1.1502-20T(i)(4) with or (i) as part of any timely filed (including an extensions) original return for a taxable year that includes any date on or before March 7, 2002, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due (including any extensions).

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. 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.

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 establishes 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 a valid 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 interests of the government will not be prejudiced if relief is granted. See §301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has established it acted reasonably and in good faith in failing to timely file the election, the requirements §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under §301.9100-3, until 45 days from the date on this letter, for Parent to file the election described in §1.1502-20T(i)(4) to apply the provisions of §1.337(d)-2T. A copy of this letter should be attached to the election statement.

The above extension of time is conditioned on Parent's consolidated group's tax liability, if any, not being lower, in the aggregate for all years to which the election applies, than it would have been if the election had been made timely (taking into account the time value of money). No opinion is expressed as to Parent's consolidated group's 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 Parent's consolidated group's liability is lower. Section 301.9100-3(c).

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 condition 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 taxpayer and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer(s) 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, a copy of this letter is being sent to a second authorized representative and Parent.

Sincerely,

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

cc: