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Internal Revenue Service
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Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

CC:DOM:CORP:2 - PLR-112394-98
Date:
OCT 15 1998

Parent =

Sub =

Buyer =

Business X =

Date A =

Date B =

Date C =

Date D =

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Company Official =

Dear

This is in response to your letter dated June 5, 1998, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting the 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 Sub which occurred during its taxable year ended on Date A. Additional information was received in letters dated July 13, 1998, and August 3, 1998. The material information submitted is summarized below.

Parent is the common parent of an consolidated group that files its Federal income tax return on a calendar year basis. Sub was a wholly owned subsidiary of Parent that was included in Parent's consolidated Federal income tax return. Sub was engaged in Business X. On Date B, Parent sold all of the stock of Sub to Buyer. Buyer was not related to Parent. No election under § 338(h)(10) of the Internal Revenue Code (the "Code") was made with respect to the sale of Sub stock. It is represented that Parent recognized a loss on the sale, which Parent deducted on the return for its taxable year ended on Date A, the taxable year in which the sale occurred. The amount Parent deducted was determined in accordance with § 1.1502-20(c). Parent filed its return for its taxable year ended Date A on Date C, the extended due date of the return. The Election was not attached to the return or otherwise filed.

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. A sale is therefore a "disposition" within the meaning of § 1.1502-20(a)(2).

Section 1.1502-20(c)(1) allows a deduction for a loss disallowed by § 1.1502-20(a)(1) to the extent the loss exceeds 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.

Section 1.1502-77(a) provides that the common parent of a consolidated group shall, with certain exceptions not applicable here, be the sole agent for each subsidiary in the group. In this case, 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(c)(1). On Date C, Parent timely filed its return for its tax year ended on Date A, the taxable year in which the sale occurred, and intended to file the Election. The Election was due on Date C, as an attachment to the return.

However, for various reasons the Election was not attached to the return or otherwise filed. On Date D, which is after Date C, it was discovered that the Election had not been filed. Subsequently, this request, under § 301.9100, for an extension of time to file the Election was submitted to the Service. The statute of limitations under § 6501 of the Code has not run for the Parent's or Sub's taxable year that included the sale, or any subsequent year or years affected thereby.

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, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

(1) The taxpayer acted reasonably and in good faith; and
(2) Granting relief will not prejudice the interests of the government.

In this case, the time for filing the Election is fixed by § 1.1502-20(c)(3). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time to file the Election provided Parent otherwise satisfies the requirements of §§ 301.9100-1 through 301.9100-3.

Section 301.9100-3 provides that requests for extensions of time to file elections will be granted when the taxpayer provides evidence (including the affidavits described in § 301.9100-3(e)) establishing that the taxpayer acted reasonably and in good faith, and that 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 file the Election. The information establishes that Company Official, a tax professional, was responsible for the Election and that Parent relied on Company Official to timely make the Election .

Based on the facts and information submitted, including the representations made, we conclude that the taxpayer acted reasonably and in good faith, that the other requirements of §§ 301.9100 have been satisfied, and that 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 (as required by § 1.1502-20(c)(3)) with respect to the above described disposition of Sub stock.

The above extension of time is conditioned on the taxpayers' (Parent's and Sub'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 filed (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 or examination 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' liability is lower. Section 301.9100-3(c). In addition,

the extension to file the Election is also conditioned on Parent's "sale" of its Sub stock to Buyer on Date B being an arm's length transaction for fair market value.

We express no opinion as to: whether Parent's "sale" of its Sub stock to Buyer on Date B was at fair market value; whether Parent recognized a loss on the "sale" of its Sub stock; or if Parent recognized a loss on the "sale" of its Sub stock, as to the amount of such loss, if any, allowed as a deduction under § 1.1502-20(c)(1).

In addition, we express no opinion as to the tax treatment or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects 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 and its employees. However, the District Director should verify all essential facts and computations. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable shall still apply.

Parent must file an amended return for its tax year ended on Date A, and attach thereto 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.

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

Sincerely yours,
Assistant Chief Counsel (Corporate)

By Bernita L. Thigpen

Bernita Thigpen
Deputy Assistant Chief Counsel (Corporate)

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