

Internal Revenue Service

Department of the Treasury

Index Number: 1502.20-00
9100.00-00

Washington, DC 20224

Number: **199907014**
Release Date: 2/19/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:3 - PLR-108380-98
Date:
November 20, 1998

Parent =

Sub #X =

Sub #1 =

Sub #2 =

Buyer =

Company
Official =

Outside
CPA =

Authorized

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Representatives =

Business X =

Date A =

Date B =

Date C =

Date D =

\$X =

:

This letter is in response to your letter dated March 12, 1998, requesting, on behalf of your clients identified above, an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make a required filing. Parent is requesting the extension 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 Sub #2, which occurred during its taxable year ending on Date B. Additional information was submitted in letters dated July 13, August 10, and October 1, 1998. The material information 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. Sub #X is wholly owned by Parent; Sub #1 is wholly owned by Sub #X; and Sub #2 was wholly owned by Sub #1, until the below described purported "sale." Sub #X, Sub #1 and Sub #2 were included in Parent's consolidated federal income tax return for the period ending on Date B. On Date A (which is within Parent's taxable year ending on Date B and after February 1, 1991, the effective date of the § 1.1502-20 regulations), Sub #1 "sold" all of the stock of Sub #2 to Buyer, an unrelated third party, in a transaction represented to qualify as a sale at fair market value. It is also represented that an election under § 338(h)(10) was not made with respect to the "sale," Sub #1 recognized a loss on the "sale," and the amount of the "allowable loss" will be calculated in accordance with § 1.1502-20(c)(1).

On Date C, Parent filed its return for its taxable year ending on Date B (Date C was the extended due date for the return). The Election was not attached to such

return filed or otherwise filed, and such return was not filed consistent with the Election. However, it is represented that Parent made a timely election under § 1.1502-20(g)(4), attached the required election statement to its return (*i.e.*, the election reattributed \$X to Parent), and that the calculation of the amount of the loss that was disallowed (and the amount that may be reattributed to Parent) was made by applying § 1.1502-20(c)(1).

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 limit the amount of loss disallowed under § 1.1502-20(a)(1) to the amount specified in § 1.1502-20(c). On Date C, Parent filed its return for its taxable year ending on Date B, the taxable year in which the disposition occurred. 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, it was discovered that the Election had not been filed. Subsequently, this request, under § 301.9100-1, for an extension of time to file the Election was submitted to the Service. The period of limitations on assessment under § 6501(a) has not expired for Parent's, Sub #1's, or Sub #2's taxable year in which the "sale" was consummated or for the taxable year in which the Election should have been filed. Moreover, it is represented that if relief is granted Parent will not receive a refund for any taxable year for which the period of assessment under § 6501(a) is closed.

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. Section 1.1502-20(h) provides that, as a general rule, § 1.1502-20 applies with respect to dispositions on or after February 1, 1991.

Section 1.1502-20(c)(1) provides, as a general rule, that the amount of loss disallowed under § 1.1502-20(a)(1) will not exceed an amount determined by a specified formula. Section 1.1502-20(c)(3) provides that the § 1.1502-20(c)(1) limitation on the amount of a loss disallowed applies only if the statement specified in § 1.1502-20(c)(3), and entitled "ALLOWED LOSS UNDER SECTION 1.1502-20(c)," is filed with the taxpayer's return for the year of disposition.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), will be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return year.

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, provided the taxpayer

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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.

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 section 301.9100-2. Requests for relief under section 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 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, Outside CPA, and Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information also establishes that a tax professional was responsible for the Election, that Parent relied on him to make the Election, and that granting an extension will not prejudice the interests of the government.

Based on the facts and information submitted, including the representations made, we conclude that the Parent has shown it acted reasonably and in good faith, 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, Sub #X's, Sub #1's, and Sub #2'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

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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 301.9100-3T(c).

We express no opinion as to whether Sub #1's purported "sale" of Sub #2 constituted a disposition within the meaning of § 1.1502-20(a)(2); whether a loss was recognized on the disposition; or if a loss was recognized on the disposition, as to the amount of the loss disallowed and/or allowed, if any, under § 1.1502-20(c)(1); and as to the amount (if any) that may be reattributed to Parent under § 1.1502-20(g)(4).

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other sections 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 and/or their representatives. However, the District Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

Parent must file an amended return for its tax year ending on Date B, 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) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, we are sending copies of this letter to Company Official and Outside CPA.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By Richard Todd
Richard Todd
Counsel to the Assistant
Chief Counsel (Corporate)