

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

May 2, 2001

LEGEND

Parent =

Sub =

Buyer =

Parent's Company
Officer =

Tax
Professionals =

Date A =

Date B =

Date C =

Date D =

\$A =

This is in response to your October 12, 2000 letter requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. Parent (as the common parent of the consolidated group of which Sub was a member) is requesting the extension to file a statement of allowed loss under § 1.1502-20(c)(3) of the Income Tax Regulations (sometimes hereinafter referred to as the "Election"), for its taxable year ending on Date B. Additional information was received in a letter dated February 1, 2001. The material information is summarized below.

Parent is the common parent of a consolidated group that has a calendar taxable year and that uses the accrual method of accounting. Prior to the sale described below, Sub was a wholly owned subsidiary of Parent and was included in Parent's consolidated federal income tax return.

On Date A, Parent sold all of the stock of Sub to Buyer, an unrelated corporation, for cash and recognized a loss. On its return (as amended) for its taxable year ending on Date B, Parent claimed a \$A loss on the sale. It is represented that: (1) an election under § 338(h)(10) has not been made with respect to the sale of Sub; (2) that the loss parent recognized on the sale, absent the Election, is disallowed under § 1.1502-20(a)(1); and (3) the amount Parent deducted on its amended return as the "allowable loss" was determined in accordance with § 1.1502-20(c)(1).

The Election was due on Date C (*i.e.*, the date Parent filed its consolidated federal income tax return for its taxable year ending on Date B). However, for various reasons the Election was not filed. On Date D (which is after the due date for the Election), Tax Professionals discovered that the Election should have been, but was not, filed. It is represented that the statute of limitations under § 6501 of the Internal Revenue Code has not expired for the Parent group's taxable year for which the Election should have been filed, or for any taxable year(s) that would have been affected by the Election had it been timely 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) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

Section 1.1502-20(c)(1) general provides that the amount of loss disallowed by § 1.1502-20(a)(1) shall not exceed an amount determined by a specified formula. Section 1.1502-20(c)(3) provides that the loss allowed under § 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.

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.

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 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 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's Company Officer and Tax Professionals explain the circumstances that resulted in the failure to timely file the Election. The information establishes that competent tax professionals were responsible for the Election, that Parent relied on the tax professionals to timely file the Election, and that 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 acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, subject to the below conditions, we grant an extension of time under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election with respect to the disposition of Sub on Date A, as described above.

The above extension of time is conditioned on: (i) the purported sale constituting a valid disposition, within the meaning of § 1.1502-20; (ii) the taxpayer's (Parent's consolidated group'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 taxpayer's tax liability for the years involved. A determination thereof will be made by the director's office 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 taxpayer's liability is lower. Section 301.9100-3(c).

Parent must file the Election in accordance with § 1.1502-20(c)(3). Parent must file as necessary, amended returns for the taxable year in which the sale occurred and for all affected taxable years (*e.g.*, the carryback years and any carryforward years for which a return has been filed), and Parent must attach to the amended returns a copy of the Election (including a copy of the information required by § 1.1502-20(c)(3), or corrected information, as applicable) and a copy of this letter.

We express no opinion as to: (1) whether a loss was, in fact, recognized on the purported sale of Sub, or as to the amount of such loss (if any); or (2) whether the purported sale of Sub constituted a disposition, within the meaning of § 1.1502-20(a)(2).

In addition, 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 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 taxpayers. However, the director should verify all essential facts. 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 letter is directed only to the taxpayer(s) 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, we are sending a copy of this letter to your authorized representative.

Sincerely yours,
Associate Chief Counsel (Corporate)
By *Ken Cohen*
Senior Technical Reviewer, Branch 3

cc: