

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200414036**

Release Date: 4/2/04

Index Number: 9100.22-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04 – PLR-162430-03

Date:

December 19, 2003

LEGEND

Parent =

Subsidiary =

Company =

X =

Date A =

Date B =

Company Official =

Tax Professional =

Dear

This letter responds to a letter dated October 27, 2003, submitted on behalf of Parent requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a statement. Parent is requesting an extension of time to file a statement under § 1.337(d)-2T(c) of the Income Tax Regulations (the

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“Statement”) with respect to Parent’s basis adjustment in its Subsidiary stock in connection with the issuance of X shares of Subsidiary stock to Company on Date A (“Stock Issuance”). Additional information was received in a letter dated December 11, 2003. The material information is summarized below.

Parent is the common parent of a consolidated group. Subsidiary was a member of Parent’s consolidated group until the Date A Stock Issuance. Company is not a member of the consolidated group.

Parent intended to file the Statement. The Statement was due on Date B, but for various reasons a valid Statement was not filed. Parent has at all times treated the Stock Issuance as if the Statement had been filed. After the due date for the Statement, it was discovered that the Statement had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Statement. The period of limitations on assessment under § 6501(a) has not expired for Parent’s taxable year in which the Stock Issuance occurred, the taxable year in which the Statement should have been filed, or any taxable year that would have been affected by the Statement had it been timely filed.

Section 1.337(d)-2T governs the amount of basis reduction required in deconsolidations of subsidiary stock. Section 1.337(d)-2T(b) generally provides that if a member’s basis in subsidiary stock exceeds its value immediately before a deconsolidation of the stock, then the stock’s basis must be reduced to its value. For this purpose, § 1.337(d)-2T(b)(2) defines a deconsolidation as any event that causes a share of subsidiary stock to be no longer owned by a group member. An exception to the general rule of § 1.337(d)-2T(b) is set forth in § 1.337(d)-2T(c)(2). Section 1.337(d)-2T(c)(2) does not require a basis reduction to the extent the taxpayer establishes that the basis is not attributable to the recognition of built-in-gain on the disposition of an asset. A taxpayer who qualifies for the exception under § 1.337(d)-2T(c) must attach a statement to its tax return entitled “§ 1.337(d)-2T(c) statement.” Section 1.337(d)-2T(c)(1). Section 1.337(d)-2T(c)(3) requires that the taxpayer file the § 1.337(d)-2T(c) statement with its tax return for the year in which the deconsolidation takes place and sets forth other filing requirements.

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

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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 Statement is fixed by the regulations (i.e., § 1.337(d)-2T(c)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Statement, 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, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Statement. The information establishes that Parent reasonably relied on a qualified tax professional who failed to file, or advise Parent to file, the Statement, the request for relief was filed before the failure to file the Statement was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

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 45 days from the date on this letter, for Parent to file the Statement with respect to the Stock Issuance, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must amend its return by filing the Statement under § 1.337(d)-2T(c). A copy of this letter must be attached to the Statement.

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 Statement applies, than it would have been if the Statement had been timely filed (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 applicable 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 tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax consequences of filing the Statement late under the provisions of any other section of the Code and regulations, or

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as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Statement 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. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Statement, penalties and interest that would otherwise be applicable, if any, continue to apply.

This 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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