

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200835006**
Release Date: 8/29/2008

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 9100.29-00, 337.16-00

, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-107013-08
Date:
May 28, 2008

Legend

Parent

Sub

Purchaser

Parent Official

Tax Professional

Date 1

Dear :

This letter responds to a letter dated February 13, 2008, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a "§ 1.337(d)-2(c) statement" under § 1.337(d)-2(c) of the Income Tax Regulations (the "Election") in order to recognize some or all of a loss upon the disposition of stock of a subsidiary. The material information is summarized below.

Parent is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Sub was a member of the group. On Date 1, Parent sold all of the outstanding stock of Sub to Purchaser at a loss.

An election under § 1.337(d)-2(c) to recognize some or all of a loss upon the disposition of the stock of a subsidiary (Sub) was required to be filed with or as part of the Parent group's consolidated income tax return for the year of the disposition. However, for various reasons, the Election was not filed. Subsequently, this request was submitted, under §§ 301.9100-1 and 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for Taxpayer's consolidated taxable year for which the Election should have been filed or for any taxable year that would be affected by the Election had it been timely filed.

Section 1.337(d)-2(a)(1) provides that 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 1.337(d)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized in whole or in part.

Section 1.337(d)-2(c)(1) provides that § 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled "§ 1.337(d)-2(c) statement" is included with the return in accordance with § 1.337(d)-2(c)(3).

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under § 1.337(d)-2(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's consolidated return for the year of the disposition.

In general, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005.

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 an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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 it is established 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., § 1.337(d)-2(c)(3)). 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 that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the 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 request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and affidavits submitted, we conclude that Parent has shown that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that 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 Election.

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 Election applies and all subsequent years, 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 Taxpayer's tax liability for the years involved. A determination thereof will be made by the appropriate Service 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 taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, Parent qualifies substantively to make the Election. No opinion is expressed regarding whether Parent incurred a loss on its disposition of its stock in Sub. In addition, we express no opinion as to the tax effects or other tax consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to 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 § 301.9100-3, we relied on certain information and affidavits provided by Parent, Parent Official, and Tax Professional made under

penalties of perjury. However, the appropriate Service office should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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

cc: