

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated June 19, 2008, submitted on behalf of Parent, the common parent of a consolidated group, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in letters dated August 1, August 5, and August 28, 2008. The extension is being requested in order to allow Parent to file an election under § 1.1502-13(f)(5)(ii) of the Income Tax Regulations (the "Election") to continue deferral of an intercompany item that would have been triggered, if not for the election, on liquidation of a subsidiary. The material information submitted for consideration is summarized below.

In Year 1, the Parent group acquired Sub1 in a forward subsidiary merger in which Sub1 merged with and into Seller, with Seller surviving. Seller acquired a carryover basis in Sub1's assets, which included the stock of Target. Shortly thereafter, Seller contributed all the stock of Target to its wholly-owned subsidiary, Buyer, in a § 351 transaction. In the transaction, there was a large amount of boot received by Seller and a resulting \$X gain on the Target stock was deferred under § 1.1502-13. In Year 2, there was a deemed liquidation of Target into Buyer on Target's conversion to a single-member LLC, which, but for the making of the Election, would have triggered the deferred gain.

The Election is made by (a) attaching a copy of the plan described in § 1.1502-13(f)(5)(ii)(B)(2) to a timely filed return (including extensions), (b) attaching the statement described in § 1.1502-13(f)(5)(ii)(E) to a timely filed return (including extensions), and (c) transferring substantially all the assets of the target corporation to a new corporation within 12 months of the filing of the tax return that includes the above described plan and statement pursuant to § 1.1502-13(f)(5)(ii)(B)(2). However, for various reasons, the Election was not timely filed.

Subsequently, Parent submitted a request for an extension of time to make an election under § 1.1502-13(f)(5)(ii) to continue deferral of the gain and complete the transfer required under § 1.1502-13(f)(5)(ii)(B) of the former Target assets to a new member. The period of limitations on assessment under ' 6501(a) has not expired for Parent's consolidated group's taxable year in which the Election should have been

filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 1.1502-13(f)(5) provides that a seller's (S) intercompany item from a transfer to a buyer (B) of stock of another corporation (T), under certain circumstances, may be taken into account even though the T stock is never held by a nonmember after the intercompany transaction. For example, if one member, S, sells the stock of a subsidiary, T, to another member, B, at a gain, and T subsequently liquidates into B in a separate transaction to which § 332 applies, S's gain may be taken into account under the matching rule.

However, § 1.1502-13(f)(5)(ii)(B) provides that if § 332 applies to T's liquidation into B, and B transfers T's assets to a new member (new T) in a transaction not otherwise pursuant to the same plan or arrangement as the liquidation, the transfer is nevertheless treated for all Federal income tax purposes as pursuant to the same plan or arrangement as the liquidation. For example, if T liquidates into B, but B forms new T by transferring substantially all of T's former assets to new T, S's intercompany gain or loss generally is not taken into account solely as a result of the liquidation if the liquidation and transfer would qualify as a reorganization described in § 368(a). (Under § 1.1502-13(j)(1), B's stock in new T would be a successor asset to B's stock in T, and S's gain would be taken into account based on the new T stock.)

Section 1.1502-13(f)(5)(ii)(B)(2) provides that the transfer of an asset to new T not otherwise pursuant to the same plan or arrangement as the liquidation is treated as pursuant to the same plan or arrangement only if B transfers the asset to new T pursuant to a written plan, a copy of which is attached to a timely filed original return (including extensions) for the year of T's liquidation, and the transfer is completed within 12 months of the filing of that return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T as part of the same plan or arrangement.

Section 1.1502-13(f)(5)(ii)(E) requires that an election to apply § 1.1502-13(f)(5)(ii) be made in a separate statement and use the specific language provided in the regulations. The election must be filed with the consolidated group's income tax return for the year of T's liquidation. The Commissioner may impose reasonable terms and conditions to the application of § 1.1502-13(f)(5)(ii) that are consistent with the purposes of such section.

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 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 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 Government's interests. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.1502-13(f)(5)(ii)(B)(2) and (E)). 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, 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 the Election. The information establishes that Parent reasonably relied on qualified tax professionals who failed to make, or advise Parent to make, the Election. See § 301.9100-3(b)(1)(v).

In addition, Parent has made the following representation:

The Parent group will treat the deemed liquidation of Target and the subsequent transfer of Target's assets to a new member in accordance with § 1.1502-13(f)(5)(ii) as a transfer from Target to such new member in a reorganization described in § 368(a).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Parent has shown that it 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, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent to file the Election.

Parent should file the Election by, within 60 days of the date on this letter, (a) attaching a copy of the plan described in § 1.1502-13(f)(5)(ii)(B)(2) to an amended return for the tax year ended Date 1, (b) attaching the statement described in § 1.1502-13(f)(5)(ii)(E) to an amended return for the tax year ended Date 1, and (c) transferring substantially all of Target's former assets to a new corporation. A copy of this letter should be attached to the Election statement. Alternatively, if Parent files its amended return electronically, Parent may satisfy this latter

requirement by attaching to the return a statement that provides the date and control number (PLR-127933-08) of this ruling letter.

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, 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 Parent's consolidated group'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 taxpayers' tax liability is lower. Section 301.9100-3(c).

CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, we express no opinion as to the tax effects or 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 statements and representations made by Parent, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any otherwise applicable penalties and interest continue to apply.

PROCEDURAL STATEMENTS

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

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