

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-135370-14

Date:

January 23, 2015

Legend

Parent =

Sub 1 =

Sub 2 =

State A =

Date 1 =

Date 2 =

Date 3 =

Parent Official =

Former Parent Official =

Dear \_\_\_\_\_ :

This letter responds to a letter dated September 19, 2014, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time to file a statement under § 1.337(d)-2(c) of the Income Tax Regulations to prevent some or all of a reduction in basis in the stock of a subsidiary upon the deconsolidation of the subsidiary (the "Election"). The material information submitted in that letter and in subsequent correspondence is summarized below.

Parent is a State A corporation and the common parent of a group of affiliated corporations that join in filing a consolidated U.S. Federal income tax return (the "Parent Consolidated Group"). On Date 1, Parent acquired all of the outstanding common stock of Sub 1 (the "Sub 1 Stock") for cash. On Date 2, when the fair market value of the Sub 1 Stock was less than Parent's aggregate tax basis in the Sub 1 Stock, Parent transferred all of the Sub 1 Stock to Sub 2 (a related corporation that was not a member of the Parent Consolidated Group) solely in exchange for Sub 2 preferred stock in a transaction to which section 351 applied (the "Exchange"). Parent recognized no gain or loss on the Exchange. As a result of the Exchange, Sub 1 ceased to be a member of the Parent Consolidated Group at the end of the day on Date 2.

Under section 358, Parent's tax basis in the Sub 2 preferred stock received in the Exchange equaled Parent's tax basis in the Sub 1 Stock immediately before the Exchange. Parent and Sub 2 did not make an election under section 362(e)(2)(C) to reduce Parent's tax basis in the Sub 2 preferred stock; instead, Sub 2 reduced its tax basis in the Sub 1 Stock under section 362(e)(2)(A).

To avoid reducing Parent's tax basis in the Sub 1 Stock under § 1.337(d)-2(b) to an amount equal to its fair market value immediately before the Exchange, Parent was required to file the Election with or as part of the Parent Consolidated Group's tax return for the tax year that ended on Date 3. However, for various reasons, the Election was not filed. After the due date for the Election, Parent and its tax advisors discovered that the Election had not been filed. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election. Parent has represented that Parent is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the request for relief was submitted.

Section 1.337(d)-2(a)(1) provides a general rule 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(b)(1) provides a general rule that if the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately

before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value.

Section 1.337(d)-2(b)(2) provides that deconsolidation means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

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

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

In general, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005 and before September 17, 2008.

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 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 to the satisfaction of the Commissioner 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 Former Parent Official 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 file, or advise Parent to file, the Election, and that the request for relief was filed before the failure to timely file the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has established that it acted reasonably and in good faith in failing to timely file the Election, 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, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the Parent 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 timely made (taking into account the time value of money). We express no opinion as to the Parent 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.

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 particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. 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 have relied on certain statements and representations made by Parent, Parent Official, and Former Parent Official 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 penalties and interest that otherwise would be applicable still apply.

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.

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.

In accordance with the Power of Attorney on file with 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)