

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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September 28, 1999

LEGEND

Parent =

Sub 1 =

Sub 2 =

Company
Official =

Tax
Professional =

Authorized
Representatives =

Date W =

Date X =

Date Y =

Year Z =

\$a =

Dear :

This is in response to your letter dated July 16, 1999 on behalf of the above taxpayers requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file a statement. Parent is requesting an extension of time to file a statement of allowed loss under § 1.1502-20(c)(3) (the "Election"), for its taxable year ending on Date W. Additional information was received in a letter dated August 27, 1999. The material information is summarized below.

Parent is the common parent of a consolidated group that includes Sub 1 and Sub 2. Parent files its Federal income tax return on a calendar year basis and uses the accrual method of accounting. Parent wholly owns the stock of Sub 1 and the common stock of Sub 2. Sub 1 owned the preferred stock of Sub 2. On Date X, Sub 1 sold the Sub 2 preferred stock to an unrelated party. Sub 1 recognized a \$a loss on the sale, which Parent deducted on the return for its taxable year ended on Date W. The amount Parent deducted was determined in accordance with § 1.1502-20(c). Parent filed its return for its taxable ended Date W on Date Y. The Election was not attached to the return or otherwise 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) defines a disposition as any event in which gain or loss is recognized, in whole or in part.

Section 1.1502-20(c)(1) allows a deduction for a loss disallowed under § 1.1502-20(a)(1) to the extent the loss exceeds an amount determined by a specified formula. Section 1.1502-20(c)(3) provides that § 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.

Section 1.1502-77(a) provides that the common parent of a consolidated group shall, with certain exceptions not applicable here, be the sole agent for each subsidiary in the group. In this case, Parent as the common parent of the consolidated group, was required by § 1.1502-20(c)(3) to make and attach the Election to its return for the year of disposition in order to deduct the amount, if any, of the loss not disallowed under § 1.1502-20(c)(1). On Date Y, Parent timely filed its return for its tax year ended on Date W and intended to file the Election. The Election was due on Date W, as an attachment to the return. However for various reasons the Election was not attached to the return or otherwise filed. Sometime in Year Z, which is after the due date for the year ended Date W, it was discovered that the Election had not been timely filed. Subsequently, this request, under § 301-9100, for an extension of time to file the

Election was submitted to the Service. The statute of limitations on assessments under § 6501 of the Code has not run for the Parent's, Sub 1's, or Sub 2's taxable year that included the sale, or any subsequent year or years affected thereby.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

- (1) The taxpayer acted reasonably and in good faith, and,
- (2) Granting relief will not prejudice the interests of the government.

In this case, the time for filing the Election is fixed by § 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 can show 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 Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information establishes that Tax Professional was responsible for the Election, that Parent requested relief under § 301.9100 before the failure to make the Election was discovered by the Internal Revenue Service, that Parent had filed its return as if the Election had been made and consistent therewith, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i) and (iv).

Based on the facts and information submitted, including 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 have been satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, 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 above described disposition of Sub 2 stock.

The above extension of time is conditioned on the taxpayers' tax liability being not lower, in the aggregate, for all years to which the Election apply, than it would have been if the Election had been timely filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the District Director's office upon audit or examination 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' liability is lower. Section 301.9100-3(c). In addition, the extension to file the

Election is also conditioned on Sub 1's sale of its Sub 2 stock on Date X being an arm's length transaction for fair market value.

We express no opinion as to whether Sub 1's sale of its Sub 2 stock was at fair market value; whether Sub 1 recognized a loss on the "sale" of its Sub 2 stock, and if so, as to the amount thereof; or, if Sub 1 recognized a loss on the "sale" of its Sub 2 stock, as to the amount of the loss allowed as a deduction under § 1.1502-20(c)(1), if any.

In addition, we express no opinion as to the tax treatment or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayer, its employees and representatives. However, the District 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.

Parent must file an amended return for its tax year ended on Date W, and attach thereto the Election and information set forth in § 1.1502-20(c)(3).

A copy of this letter is being sent to the taxpayer and the authorized representative designated on the power of attorney.

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.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: _____
Richard Todd
Counsel to the Assistant
Chief Counsel (Corporate)