

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:3 PLR-106548-01

Date:

April 17, 2001

Parent =

Target =

Buyer =

Company Official =

Authorized
Representative =

Date A =

Date B =

Date C =

Date D =

Date E =

x =

y =

This letter responds to your Authorized Representative's January 30, 2001 letter requesting an extension of time, under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations, to file a statement of allowed loss. Parent (as the common parent of the consolidated group) is requesting an extension of time to file a statement of allowed loss under § 1.1502-20(c)(3) of the Income Tax Regulations ("the Election"), with respect to the disposition of Target which occurred during its taxable year ending on Date A. Additional information was received in a letter dated February 26, 2001. Material information submitted is summarized below.

Parent is the common parent of a consolidated group that has a calendar taxable year and uses the accrual method of accounting. Parent purchased all of the stock of Target on Date B for \$x. On Date C (which is within Parent's taxable year ending on Date A) Parent sold all of the stock of Target to Buyer, an unrelated party, for \$y, net of closing costs. It is represented that (1) Parent recognized a loss on the sale; (2) Parent deducted the loss on its return for its taxable year ending on Date A; (3) an election under § 338(h)(10) of the Internal Revenue Code was not made with respect to the sale; and (4) the amount Parent deducted was determined in accordance with § 1.1502-20(c). On or before Date D, the due date of the return, Parent filed its return for its taxable year ending on Date A.

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(a)(1). The Election was due on Date D, as an attachment to the return. Parent intended to timely file the Election but for various reasons the Election was not attached to the return or otherwise filed. On Date E, it was discovered that the Election had not been filed. Subsequently, this request, under § 301.9100-1, for an extension of time to file the Election was submitted to the Service. The statute of limitations for the taxable year ending on Date A has not expired, nor has the statute of limitations expired for any subsequent year affected by the Election.

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(c)(1) provides that the amount of loss disallowed under § 1.1502-20(a)(1) and the amount of basis reduction under § 1.1502-20(b)(1) with respect to a share of stock shall not exceed the sum of the amounts set forth in §§ 1.1502-20(c)(i), (ii), and (iii). 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.

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 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., § 1.1502-20(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 shows 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 and representations submitted by Parent, and an affidavit submitted by Company Official explain the circumstances that resulted in the failure to timely file the valid Election. The information establishes that Parent reasonably relied on a qualified tax professional to make the Election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent 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 § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's and Target'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). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made 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' liability is lower. Section 301.9100-3(c).

Parent must amend its return for its tax year ending on Date A, to attach to the return the Election and information set forth in § 1.1502-20(c)(3). In addition, Parent

should attach a copy of this letter to the amended return.

We express no opinion as to (1) whether Parent recognized a loss on the sale of Target stock; (2) if a loss was recognized on the sale, the amount of the loss; and (3), if a loss was recognized on the sale, the amount of the loss disallowed under § 1.1502-20(a) (if any), and the amount of the loss allowed under § 1.1502-20(c)(1) (if any).

In addition, no opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or tax effects or consequences 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, essential facts should be verified on audit. 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.

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

A copy of this letter is being sent to your Authorized Representative, pursuant to a power of attorney on file in this office.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Ken Cohen

Ken Cohen

Senior Technician Reviewer, Branch 3