

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

November 22, 2000

LEGEND

Parent	=
Target	=
Sub 1	=
Sub 2	=
Sub 3	=
Company Official	=
Company Employee	=
Date A	=
Date B	=
Date C	=

Dear :

This responds to a letter dated July 17, 2000, in which your Authorized Representatives requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information regarding your request was submitted in letters dated October 2, 2000 and November 8, 2000. The extension is being requested for Parent (as common parent of the consolidated group) to file an election statement under § 1.1502-13(f)(5)(ii)(E) of the Income Tax Regulations (regarding a transaction described in § 1.1502-13(f)(5)(ii)(C)) ("the Election"). The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group (the "Group") that included Sub 1, Sub 2, Sub 3, and Target (in addition to other subsidiaries that are not material to this request). The Group files a consolidated return on a calendar year basis, and the members use the accrual method of accounting.

Prior to Date A, Parent owned 100 percent of the stock of Sub 1 and Sub 2. Target was a wholly-owned subsidiary of Sub 1, and Sub 3 was a wholly-owned subsidiary of Sub 2. On Date A, Parent contributed 100 percent of the stock of Sub 1 to Sub 2. On the same day, Sub 1 distributed a dividend to Sub 2 of 100 percent of the stock of

Target. Also on Date A, Sub 2 contributed 100 percent of the stock of Target to Sub 3. As a result of the transaction described above, Sub 1 recognized gain on its distribution of the Target stock under § 311(b). However, under § 1.1502-13, this gain was not currently taken into account.

On Date B, Sub 3 sold 100 percent of the Target stock to a third party. With regard to the stock sale, the parties to the transaction elected asset sale treatment under § 338(h)(10).

On Date C, the Group filed its Federal income tax return for its taxable year that included Date B. The Election under § 1.1502-13(f)(5)(ii)(E) was not attached to the return or otherwise filed. Following Date C, Company Official, Company Employee, and Outside CPA discovered that the Election had not been timely filed. The statute of limitations under § 6501 has not expired for the Group's taxable year in which the Election should have been made, or for any year affected by the Election.

The Election was required to be made on the original return filed for Group's tax year that included Date B, which was filed on Date C. For various reasons, the Election was not filed.

Section 1.1502-13(f)(5)(ii)(A) provides, in part, that if an election is made pursuant to paragraph (f)(5)(ii), certain transactions are recharacterized to prevent the items of the Selling Member of the group ("S") from being taken into account, or to provide offsets to those items.

Section 1.1502-13(f)(5)(ii)(C) provides relief to consolidated groups in the case of transactions for which an election is made under § 338(h)(10). Paragraph (f)(5)(ii)(C) applies to a deemed liquidation of T under § 332 as a result of an election under § 338(h)(10). Under paragraph (f)(5)(ii)(C)(1), the Buying Member of the group ("B") is treated, with respect to each share of the stock that it holds in another corporation ("T"), as recognizing as a corresponding item any loss or deduction it would recognize (determined after adjusting stock basis under § 1.1502-32) if § 331 applied to the deemed liquidation. For all other Federal income tax purposes, the deemed liquidation remains subject to § 332. The amount of B's loss or deduction under paragraph (f)(5)(ii)(C)(1) is subject to limitation under paragraph (f)(5)(ii)(C)(2).

Section 1.1502-13(f)(5)(ii)(E) requires that an election to apply paragraph (f)(5)(ii) be made in a separate statement and use the specific language provided in the regulations. Additionally, the election must be filed with the group's income tax return for the year of T's liquidation (or other transaction). A separate election must be made for each application of § 1.1502-13(f)(5)(ii).

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 including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). 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, Parent (as the common parent of the consolidated group) was required by the regulations to file the Election on Date C. However, for various reasons, the Election was not filed. Subsequently, Parent filed this request, under §§ 301.9100-1 and 301.9100-3, for an extension of time to file the Election. Because the time for filing the Election is fixed by the regulations (i.e., § 1.1502-13(f)(5)(ii)(E)), the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided that Parent shows 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, Company Employee, Outside CPA, and Authorized Representatives explain the circumstances that resulted in the failure to timely file a valid Election. The information also establishes that tax professionals were responsible for the Election, that Parent relied on them to timely make the Election, and that 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 has shown 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. 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 and subsidiaries) 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 by the District 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 the taxpayers’ liability is lower. Section 301.9100-3(c).

Parent (as the common parent of the consolidated group) is instructed to amend the Group’s Federal income tax return for the year that included Date B, and to file the Election in accordance with the provisions of the regulations applicable to the Election. Additionally, a copy of this letter must be attached to the amended return.

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.

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 referred to in this letter. Specifically, no opinion is expressed as to whether the Group qualifies to make the Election. In addition, no opinion is expressed as to the tax effects or consequences of filing the Election late which are not specifically set forth in the above ruling. Notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, shall apply.

This ruling is directed only to the taxpayer(s) 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.

Sincerely yours,
Associate Chief Counsel (Corporate)
By :Ken Cohen
Acting Chief, Branch 3