

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

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Refer Reply To:

CC:CORP:B06 – PLR-104083-04

Date:

April 12, 2004

### Legend

Parent =

Sub1 =

Sub2 =

Seller =

Buyer =

Date 1 =

Date 2 =

Date 3 =

Business =

Loss Co =

Vice President Tax =

Dear

This letter responds to a letter dated December 22, 2003, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file a “§ 1.337(d)-2T(c) statement” under § 1.337(d)-2T(c)(3) (the “Election”) that was supposed to be filed with its consolidated Federal income tax return filed on Date 3. Additional information was received in a letter dated February 20, 2004. The information submitted is summarized below.

Parent is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Parent owns all of the stock of Sub1, which owns all of the stock of Sub2, which owned all of the stock of Seller. Buyer is an unrelated corporation.

On Date 1, Parent, Sub1 and Seller entered into an agreement to sell Seller’s Business to Buyer. The transaction closed on Date 2. One of the assets of Business sold in the transaction was the stock of LossCo.

An election under § 1.337(d)-2T(c)(3) to recognize some or all of a loss upon the disposition of the stock of a subsidiary (LossCo) was required to be filed with or as part of Parent's consolidated group's return for the year of the disposition, the year that includes Date 2. Parent intended to attach the Election to its consolidated Federal income tax return filed for that taxable year, but for various reasons the Election was not attached. The return was filed consistent with the Election having been made. The statute of limitations on assessment under § 6501(a) has not expired for Parent's consolidated group's taxable year for which it wants to make the Election or for any taxable years that would be affected by the Election had it been timely filed.

Section 1.337(d)-2T(a)(1) provides 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)-2T(c)(1) provides that § 1.337(d)-2T(c) applies with respect to stock of a subsidiary only if a separate statement entitled “§ 1.337(d)-2T(c) statement” is included with the return in accordance with § 1.337(d)-2T(c)(3).

Section 1.337(d)-2T(c)(2) provides that loss is not disallowed under § 1.337(d)-2T(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2T(c)(3) provides that the statement required under § 1.337(d)-2T(c)(1) must be included with or as part of the taxpayer's return for the year of the 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. 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., § 1.337(d)-2T(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 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, affidavits, and representations submitted by Parent and Vice President Tax 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 make, or advise Parent to make, the Election, the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (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 § 301.9100-3, until 90 days from the date on this letter, for Parent to file the Election.

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 timely made (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 the taxpayers' liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, 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 relied on certain statements and representations made by Parent and Vice President Tax. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent.

Sincerely,

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