

Internal Revenue Service

Department of the Treasury

Number: **200125056**

Release Date: 6/22/2001

Index Number: 9100.00-00
382.02-05

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:2-PLR-122407-00

Date:

March 14, 2001

Legend:

Parent =

Sub =

Shareholders =

Buyer =

Date A =

Date B =

Date C =

Parent's
Company Official =

Tax Professional 1 =

Tax Professional 2 =

Authorized
Representative =

Dear :

This responds to your Authorized Representative's October 18, 2000 letter requesting, on behalf of the above corporations, an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent (as the common parent of the consolidated group that includes Sub) is requesting an extension to file a "closing-of-the-books election" pursuant to § 1.382-6(b) of the Income Tax Regulations (sometimes hereinafter referred to as the "Election"), with respect to the sale of Parent on Date A. Additional information was received in letters dated February 7 and February 9, 2001. The material information is

PLR-122407-00

summarized below.

Parent is the common parent of a consolidated group (the "Group") that presently has a calendar taxable year and uses the accrual method of accounting. Sub is a wholly owned subsidiary of Parent, and is included in Parent's consolidated income tax return. Prior to Date A, Shareholders owned all of the stock of Parent.

On Date A, Buyer purchased 100% of the outstanding shares of Parent from Shareholders (the "Transaction"). It is represented that: (1) the Group is a "loss group" as defined in § 1.1502-91A(c)(1); (2) prior to Date A and after December 31, 1986, the Group has not undergone an ownership change as defined in § 382(g)(1); (3) as a result of the Transaction, the Group underwent an ownership change; (4) the Group has not accelerated income into the pre-change period or deferred loss to the post-change period for the purpose of avoiding the application of § 382(b); (5) the Group is not under the jurisdiction of the court in a Title 11 or similar case; (6) the Group will determine its alternative minimum taxable income and adjusted current earnings for the pre-change and post-change periods based on a closing of the books as of the change date, and will elect out of ratable allocation; and (7) since Date A, The Group has continued the operation of its historic trade or business.

The Election was due on Date B (which is after Date A), but for various reasons it was not filed. On Date C (which is after Date B), Tax Professional 1 discovered that the Election was not filed. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the Group's Election should have been filed, or for any taxable year(s) that would have been affected by the Election had it been timely filed.

Section 1.382-6(a) provides that, except as provided in paragraphs (b) and (d) of the section, a loss corporation must allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

Section 1.382-6(b)(1) provides that a loss corporation may elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

Section 1.382-6(b)(2) provides that a loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382-2T(a)(2)(ii) for the change year: "THE CLOSING-OF-THE-BOOKS ELECTION UNDER § 1.382-6(b) IS HEREBY MADE WITH RESPECT TO THE OWNERSHIP CHANGE OCCURRING ON [INSERT DATE]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change year.

PLR-122407-00

Section 1.1502-91A(c)(1) defines a loss group as a consolidated group that either: (i) is entitled to use a net operating loss carryover that did not arise (and is not treated as arising) in a SRLY; (ii) has a consolidated net operating loss for the taxable year in which a testing date of the common parent occurs; or (iii) has a net unrealized built-in-loss.

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 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., § 1.382-6(b)(2)). Therefore, 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 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, Parent's Company Official, Tax Professional 1, Tax Professional 2 and Authorized Representative explain the circumstances that resulted in the failure to file the Election. The information establishes that Parent relied on a qualified tax professional, that the professional failed to make, or advise Parent 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 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, as described above.

PLR-122407-00

The above extension of time is conditioned on (1) Parent in fact filing all necessary returns or amended returns consistent with this Election within 120 days of the issuance of this letter; and (2) the taxpayers' (the 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 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 file the Election in accordance with § 1.382-6(b)(2). Parent must file amended returns for the taxable year the Election was due, and for all subsequent taxable years, and attach a copy of the Election, a copy of the information statement (if one has not already been attached), and a copy of this letter.

We express no opinion regarding: (1) whether the Group is a "loss group", as defined in § 1.1502-91A(c)(1) or (2) whether an ownership change, as defined in §§ 382(g) and 1.1502-92A(b)(1)(i), occurred on Date A.

In addition, we express no opinion as to the tax 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 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. However, all essential facts are subject to verification. 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.

We are sending a copy of this letter to your Authorized Representative, pursuant to a power of attorney on file in this office.

Associate Chief Counsel (Corporate)
by Edward S. Cohen
Chief, Branch