

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

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Refer Reply To:

**CC:CORP:2/PLR-128650-01**

Date:

**September 24, 2001**

TYE:

### Legend

Parent =

Sub1 =

Sub2 =

Buyer1 =

Buyer2 =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Tax Professional =

Company Official =

Dear :

This letter responds to a letter dated February 5, 2001, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting the 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 sales of Sub1 and Sub2 during its taxable year ended on Date3. Additional information was received in letters dated July 13, August 6, August 15, and September 19, 2001. The material information submitted is summarized below.

Parent is the common parent of a consolidated group that files its Federal income tax return on a 52-53 week basis, for the taxable year ending on the Saturday closest to December 31. Parent, Sub1 and Sub2 each use the accrual method of accounting. Parent owned all of the stock of Sub1 and Sub2, which were members of its consolidated group, until each was sold to Buyer 1 and Buyer 2, respectively, on Date1 and Date2, respectively. No election under section 338(h)(10) was made in respect of the sale of the stock of either Sub1 or Sub2. Parent represents that it recognized a loss on both of such stock sales, which it deducted on the return for its taxable year ended on Date3, which was filed on Date4. The amount Parent deducted was determined in accordance with § 1.1502-20(c).

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. A sale is therefore a "disposition" within the meaning of § 1.1502-20(a)(2).

Section 1.1502-20(c)(1) allows a deduction for a loss otherwise disallowed by § 1.1502-20(a)(1) to the extent the loss exceeds a formulary amount. 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.

The Election was due on Date4, as an attachment to the return.

However, for various reasons the Election was not attached to the return or otherwise filed. On Date5, which is after the due date of the return for the year ended Date3, it was discovered that the Election had not been made. 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 assessment under § 6501 of the Code has not run for the taxable year of Parent, Sub1 or Sub2 that included either stock 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, 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 § 1.1502-20(c)(3). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time to file the Election provided Parent can show that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 through 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Tax Professional, and Company Official explain the circumstances that resulted in the failure to file the Election. The information also establishes that tax professionals were responsible for the Election and aware of all relevant facts, that Parent relied on these persons to timely make the Election. 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 in failing to timely file the Election, that the other requirements of §§ 301.9100-1 and 301.9100-3 are met, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1 until 45 days from the date on this letter, for Parent to file the Election with respect to the dispositions of the stock of Sub1 and Sub2 as described above.

The above extension of time is conditioned on the taxpayers' (Parent's, consolidated group's, Sub1's and Sub2's) tax liability 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 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 Director's office upon 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).

We express no opinion as to whether Parent's "sales" as described above were made at fair market value, whether Parent recognized a loss on such "sales", and if so, as to the amount thereof, or, if Parent recognized a loss on the "sales" of its stock of

Sub1 or Sub2, 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 of 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 and its employees. However, the Director should verify all essential facts and computations. Moreover, although an extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable shall still apply.

Parent must amend its return for its tax year ended on Date3, by attaching thereto the Election and information set forth in § 1.1502-20(c)(3). Parent should also attach a copy of this letter to the amended return.

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.

Sincerely yours,  
Associate Chief Counsel (Corporate)  
By: Ken Cohen  
Senior Technician Reviewer, Branch 3