

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person To Contact:

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CC:CORP:B02 – PLR-114883-04

Date: April 22, 2004

Parent =

Purchaser =

Acquired Sub =

Date A =

Date B =

Year 1 =

a =

b =

c =

d =

Tax Professional =

Company Official =

Dear

This letter responds to a letter dated March 4, 2004, 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 of time to file an election under § 1.1502-32(b)(4) to waive loss carryovers from a separate return limitation year to the extent the loss carryovers exceed \$d (the "Election"). The material information is summarized below.

Parent is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis. Purchaser is a wholly-owned subsidiary of Parent. Purchaser purchased 100% of the stock of Acquired Sub on Date A. At the time of the acquisition, Acquired Sub had a net operating loss carryover of \$a, a capital loss carryover of \$b, and no net unrealized built-in gain within the meaning of § 382(h). Acquired Sub's net operating loss and capital loss carryovers were limited to \$c per year under § 382. The maximum amount of Acquired Sub's loss carryovers that could be used in the Parent consolidated group before all such carryovers expired was therefore \$d. No election under § 1.1502-32(b)(4) to treat Acquired Sub's net operating losses and capital losses as expiring immediately prior to Acquired Sub's joining the Parent consolidated group was attached to the Parent group Year 1 consolidated return, the first Parent group consolidated return that included Acquired Sub.

Section 1.1502-32 provides rules for adjusting the basis of the stock of one member of a consolidated group, S, owned by another member, P, to reflect S's items of income gain, deduction, and loss in order to treat the group members as a single entity. Section 1.1502-32(a)(1). Section 1.1502-32(b)(2) provides that P's basis in S's stock is adjusted to reflect, among other things, S's noncapital, nondeductible expenses. An expiring loss carryover is such a noncapital, nondeductible expense. See § 1.1502-32T(b)(3)(iii).

Section 1.1502-32(b)(4)(i) provides that if S has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all federal income tax purposes immediately before S becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that such an election must be made in a separate statement filed with the consolidated group's return for the year S becomes a member.

The Election was due on Date B, the due date (including extensions) of the Year 1 Parent group consolidated federal income tax return, but for various reasons a valid Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for any of Parent's, Purchaser's, or Acquired Sub's taxable years that would have been affected by the Election had it been timely filed.

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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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. 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 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, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who 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 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 45 days from the date on this letter, for Parent to file a consolidated federal income tax return for the Parent group for Year 3, amended to include the Election as described above. A copy of this letter must be attached to the return.

The above extension of time is conditioned on the Parent 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 Parent group's tax liability for the years involved. A determination thereof will be made by the applicable 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' tax liability is lower. Section 301.9100-3(c).

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 § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 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.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

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

cc :