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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:5-PLR-110671-99

Date:

October 8, 1999

Parent =

Corp =

Subs =

Acquiring =

Parent's Company Officers & Tax Professionals =

Subs' Company Officer & Tax Professional =

Outside Tax Professional =

Authorized Representative =

337

Business Y =

Date A =
Date B =
Date C =
W =
$X =

This responds to your letter dated May 3, 1999, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make late elections. Parent (as the common parent of the consolidated group of which Corp is now a member) and Subs are requesting the extension to file elections under § 1.1502-20(g)(5)[(4)] of the Income Tax Regulations (sometimes hereinafter referred to in the aggregate as the "Election" or "Elections") for their taxable year ending on W. The Elections are required for the reattribution of certain losses of the Subs to Corp. Additional information was received in letters dated December 7, 1998, May 12 and October 7, 1999. The material information is summarized below.

Parent is the common parent of a consolidated group that has a calendar taxable year and that uses the accrual method of accounting. Prior to Date D (when Corp was acquired -- see the below description thereof), Corp was the common parent of a consolidated group that had a calendar taxable year. Subs, which were wholly owned subsidiaries of Corp, were included in Corp's consolidated federal income tax return until Date A (when they were deconsolidated in the below described purported sale). On Date D (which is in a taxable year ending subsequent to Corp's taxable year ending on W), Parent acquired all of the stock of Corp, and Corp was subsequently included in Parent's Consolidated Federal Income Tax Return.

On Date A (which is in the taxable year ending on W, and is after February 1, 1991, the effective date of § 1.1502-20), Corp "sold" Subs to Acquiring, and recognized a loss on the sale that was disallowed under §§ 1.1502-20(a)(1). The amount of the loss that would be disallowed is $X. Moreover, at the time of the sale each of the Subs had current and prior year losses which qualified as duplicated losses under § 1.1502-20(c)(2)(vi)(A)(2), and the Subsidiaries were not insolvent within the meaning of §1.1502-20(g)(2).

The Elections were due on Date B (i.e., the date Corp filed its consolidated federal income tax return for its taxable year ending on W, and the year of the "disposition"). However, for various reasons the Elections were not attached to the

return or otherwise filed. Moreover, the Service has not examined Parent's or Corp's returns for their taxable year ending on W. On Date C (which is after the due date for the Elections), Parent's Company Officers & Tax Professionals, Subs' Company Officer & Tax Professional, Outside Tax Professional and Authorized Representative discovered that the Elections had not been filed. Subsequently, this request was submitted to the Service, under § 301.9100-1, for an extension of time to file the Elections. The period of limitations on assessments under § 6501(a) has not expired for Parent's (and for Corp's and Subs) taxable year(s) in which the sale and alleged loss(es) arose, the taxable years in which the Elections should have been filed, or any taxable years that would have been affected by the Elections had they been timely filed.

Corp, as the then common parent of the selling consolidated group, was required by §§ 1.1502-20(g)(5)[(4)] to make and attach the Elections to its return for the year of disposition, in order to reattribute any portion of Subs' losses to Corp. Acquiring, as the common parent of the acquiring corporation, was required to attach a copy of the Election for each of the Subs (i.e., those whose losses were reattributed) to its income tax return for the first taxable year ending after the due date, including extensions, of the return in which the Elections had to be filed.

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) provides that a disposition means any event in which gain or loss is recognized, in whole or in part (e.g., a worthless stock loss). Section 1.1502-20(h) provides that, as a general rule, § 1.1502-20 applies with respect to dispositions on or after February 1, 1991.

Section 1.1502-20(g)(1) provides that, as a general rule, a common parent may reattribute to itself any portion of the net operating loss carryovers and net capital loss carryovers attributable to the subsidiary when a member disposes of stock of the subsidiary and the member's loss would be disallowed under § 1.1502-20(a)(1). The amount reattributed may not exceed the amount of loss that would be disallowed if no election is made under this paragraph (g). For this purpose, the amount of loss that would be disallowed is determined by applying paragraph (c)(1) of this section (without taking into account the requirement in paragraph (c)(3) of this section that a statement be filed) and by not taking reattribution into account. Section 1.1502-20(g)(2) limits reattribution of losses from insolvent members. Section 1.1502-20(g)(5)[(4)] provides that the election to reattribute losses under § 1.1502-20(g)(1) must be made in a separate statement, signed by the common parent and each subsidiary whose losses are being reattributed, and filed with the group's return for the taxable year of disposition.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return year.

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, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

(1) The taxpayer acted reasonably and in good faith, and,
(2) Granting relief will not prejudice the interests of the government.

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 Elections was fixed by the regulations (i.e., § 1.1502-20(g)(5)[(4)]. Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent (for itself and Corp) and Subs to file the Elections, provided Parent (for itself and Corp) and Subs 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's Company Officers &Tax Professionals, Subs' Company Officer & Tax Professional, Outside Tax Professional and Authorized Representative explain the circumstances that resulted in the failure to file the Elections. The information establishes that tax professionals were responsible for the Elections, that Parent, Corp and Subs relied on the tax professionals to timely make the Elections, 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 that have been made, we conclude that Parent, and Corp and Subs acted reasonably and

in good faith in failing to timely file the Elections, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, subject to the below conditions, we grant an extension of time under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent (for itself and Corp, and as the common parent of the consolidated group of which Corp is now a member) and Subs to file the Elections with respect to the disposition of Subs on Date A, as described above.

The above extension of time is conditioned on: (i) the purported Date A "sale" constituting a valid disposition, within the meaning of §1.1502-20, by Corp of its Subs' stock in its taxable year ending on W; and (ii) the taxpayers' (Parent's, Corp's, Subs', and Acquiring's) tax liability being not lower, in the aggregate for all years to which the Elections apply, than it would have been if the Elections 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 and Subs should file the Elections in accordance with § 1.1502-20(g)(5)[(4)]. That is, Parent (as the common parent of the consolidated group of which Corp is now a member, and Corp) should amend Corp's return for the year of disposition (i.e., for the taxable year ending on W) to attach thereto a copy of the Elections, for each of the Subs (i.e., whose losses were reattributed), and a copy of this letter. In addition, Acquiring, as the common parent of consolidated group that acquired Subs, must amend its return for its for the first taxable year ending after the due date, including extensions, in which the Elections had to be filed to attach a copy of the Elections and a copy of this letter (i.e., attach copies to its returns for its taxable year ending on W and for the succeeding year).

No opinion is expressed as to the tax effects or consequences of filing the Elections 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 Elections 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 taxpayers, their employees and representatives. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

A copy of this letter is being sent to Parent's Company Official, pursuant to the power of attorney on file in this office.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: Richard Todd

Richard Todd
Counsel to the Assistant
Chief Counsel (Corporate)