

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
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Refer Reply To:  
CC:CORP:04  
PLR-132224-07

Date:  
July 30, 2007

Legend

Parent =

Sub =

Date A =

Date B =

Company Official =

Dear

This letter responds to a letter dated July 10, 2007, submitted on behalf of Parent requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in a latter dated July 20, 2007. Parent is requesting an extension of time to file a “§ 1.337(d)-2(c) statement” under § 1.337(d)-2(c)(3) of the Income Tax Regulations (the "Election") that was required to be filed with its consolidated Federal income tax return for the taxable year ended Date B. The information submitted is summarized below.

Parent is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Sub was a member of the group. On Date A, Parent sold all of the outstanding stock of Sub, recognizing a loss on the disposition of such stock.

An election under § 1.337(d)-2(c)(3) to recognize some or all of a loss upon the disposition of the stock of a subsidiary was required to be filed with or as part of Parent's consolidated group's return for the year of the disposition. However, for various reasons, the 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) of the Internal Revenue Code has not expired for Parent's consolidated group's taxable year for which it desires 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)-2(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)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

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

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under § 1.337(d)-2(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)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition.

In general, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005.

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 Code except subtitles E, G, H, and I.

Section § 301.9100-1(b) defines the term "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. 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 it is established 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)-2(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 establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information and an affidavit submitted by Parent and Company Official 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, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and affidavit submitted, we conclude that Parent has shown that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 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 made timely (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' tax 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. Specifically, no opinion is expressed regarding whether Parent incurred a loss on its disposition of its stock in Sub. 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 information and an affidavit provided by Parent and Company Official under penalties of perjury. 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.

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. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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