Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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CC:CORP:B03
PLR-153799-08

Date:
April 08, 2009

Legend

Parent =

Sub =

Date A =

Date B =

Parent Officials =

Dear

This letter responds to a letter dated December 19, 2008, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file certain elections. Additional information was submitted in a letter dated February 3, 2009. Parent is requesting an extension of time to file statements under §§1.337(d)-2(c) and 1.1502-35(c)(5) (the "Elections") that were required to be filed with its consolidated Federal income tax return for the taxable year ended Date A. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group that included Sub. During the taxable year ended Date A, Parent's stock in Sub became worthless. However, Parent failed to claim a worthless securities deduction on the group's original tax return for such year. On Date B, a date after the due date for the Elections, Parent filed an amended return to claim a worthless securities deduction pursuant to §165(g) for the Sub stock.

Elections under §§ 1.337(d)-2(c)(3) and §1.1502-35(c)(5) to recognize the loss with respect to the disposition of the stock of Sub were required to be filed with or as part of Parent's timely filed return for its taxable year ended Date A. However, for various reasons, the Elections were not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Elections. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for Parent's taxable year for which it desires to make the Elections, or for any taxable years that would be affected by the Elections, had they 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 and before September 17, 2008.

Section 1.1502-35(c)(1) provides that any loss recognized by a member of a consolidated group with respect to the disposition of a share of subsidiary stock shall be suspended to the extent of the duplicated loss with respect to such share of stock if, immediately after the disposition, the subsidiary is a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group).

Section 1.1502-35(d)(1) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

Section 1.1502-35(c)(5)(i) provides, in part, that any loss suspended under §1.1502-35(c)(1) shall be allowed on a return filed by the group of which the subsidiary was a member on the date the consolidated group is allowed a worthless stock deduction under section 165(g) (taking into account the provisions of §1.1502-80(c)) with respect to all of the subsidiary stock owned by members.

Section 1.1502-35(c)(5)(iii) provides that the suspended loss will be allowed only if a separate statement entitled "ALLOWED LOSS UNDER §1.1502-35(c)(5)" is filed with, or as part of, the taxpayer's return for the year in which the loss is allowable.

Section 1.1502-80T, as in effect for the year at issue, provided that stock of a member is not treated as worthless under § 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii).

Section 1.1502-19(c)(1)(iii), as in effect for the year at issue, provided that a corporation's stock is treated as worthless at the time substantially all of the corporation's assets are treated as disposed of, abandoned, or destroyed for Federal income tax purposes. An asset is not considered to be disposed of or abandoned to the extent the disposition is in complete liquidation of the corporation or is in exchange for consideration (other than relief from indebtedness).

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. 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.

In this case, the time for filing the elections is fixed by the regulations (i.e., §§1.337(d)-2(c)(3) and 1.1502-35(c)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Elections, provided Parent establishes 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 and Parent Officials explain the circumstances that resulted in the failure to timely file valid Elections. The information establishes that Parent reasonably relied on qualified tax professionals who failed to make, or advise Parent to make, the Elections, and that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has established it acted reasonably and in good faith in failing to timely file the Elections, the requirements §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Elections.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent, having already amended its return for its taxable year that ended Date A to claim the worthless securities loss and to include the statements described in §§ 1.337(d)-2(c) and 1.1502-35(c)(5) must further amend its return to attach a copy of this letter to the return and any other relevant return. Alternatively, in lieu of attaching a copy of this letter to the returns, taxpayers filing their returns electronically may attach a statement to the return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on Parent's consolidated group's tax liability, if any, not being lower, in the aggregate for all years to which the Elections apply, than it would have been if the Elections 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 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 Parent's consolidated group's liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Parent qualifies substantively to make the Elections. Specifically, no opinion is expressed regarding whether or when Sub’s stock became worthless. In addition, 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- 3, we relied on certain statements and representations made by the taxpayer and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen
Acting Chief, Branch 3
Office of Associate Chief Counsel (Corporate)