**Internal Revenue Service**

Number: **201606017**
Release Date: 2/5/2016

Index Number: 337.13-00, 337.16-00, 9100.29-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B03
PLR-128260-15

Date:
October 29, 2015

LEGEND:

Taxpayer =

Corp1 =

Sub1 =

Date1 =

Date2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 21, 2015, requesting on behalf of Taxpayer an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a statement under § 1.337(d)-2(c) of the Income Tax Regulations (hereinafter referred to as the "Election") that was required to be filed with

Taxpayer's consolidated Federal income tax return for the taxable year ending Date2. Additional information was received in subsequent correspondence dated October 6, 2015. The material information is summarized below.

For the taxable year ending on Date2, Taxpayer was the common parent of a consolidated group (Taxpayer Group) that included (among other subsidiaries) Corp1 and Sub1. Corp1 owned 100 percent of Sub1.

On Date1 (a date prior to September 17, 2008), Sub1 merged into Corp1. At the time of the merger, Sub1's liabilities exceeded the fair market value of its assets and Corp1 recognized a loss with respect to the shares of Sub1.

An election under § 1.337(d)-2(c) to deduct the loss recognized on the disposition of Sub1 stock was required to be filed with or as part of the Taxpayer consolidated group's consolidated Federal income tax 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. Taxpayer has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662.

Section 1.337(d)-2(a)(1) provides a general rule 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, net of directly related expenses, 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 or deconsolidation.

Generally, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005, and before September 17, 2008.

Section 301.9100-1(a) cites §§ 301.9100-1 through 301.9100-3 as providing the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. 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 (Code) except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections while § 301.9100-3 provides for extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides requests for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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 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 Taxpayer to file the Election, provided Taxpayer 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, affidavits, and representations submitted by Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and Taxpayer reasonably relied on a qualified tax professional who failed to make or advise Taxpayer to make the Election. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Taxpayer has established it acted reasonably and in good faith in failing to timely file the Election for Sub1, 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 60 days from the date on this letter for Taxpayer to file the Election with respect to the disposition of Sub1. However, this letter does not extend the period of time described in § 6511 by which a taxpayer is required to file a claim for credit or refund of an overpayment of tax.

The 60-day extension of time is conditioned on Taxpayer Group's tax liability, if any, not being 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).

We express no opinion with respect to whether Taxpayer qualifies substantively to make the Election. No opinion is expressed as to the tax effects or 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 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 Election, penalties and interest that would otherwise be applicable, if any, continue to apply. No opinion is expressed as to Taxpayer Group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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,

_____

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

cc: