

Internal Revenue Service

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Person To Contact:
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Refer Reply To:
CC:CORP:B03
PLR-154380-12

Date:
April 15, 2013

Legend

Substitute Agent =

Parent =

Subsidiary =

Company Official & Tax Professional =

Date A =

Dear :

This letter responds to a letter dated December 20, 2012, submitted on behalf of Substitute Agent, requesting an extension of time under § 301.9100-3, of the Procedure and Administration Regulations to file a statement under §§ 1.337(d)-2(c) and 1.1502-35(c)(5) of the Income Tax Regulations, as in effect for the taxable year ended Date A (the "Elections"). The material information submitted for consideration is summarized below.

For the taxable year ended Date A, Parent was the common parent of a consolidated group (the "Parent Consolidated Group"). Subsidiary was a member of the

Parent Consolidated Group. During the taxable year ended Date A, the Subsidiary stock became worthless. However, Parent failed to claim a worthless securities deduction on the group's consolidated income tax return for such year.

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 Subsidiary 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. Substitute Agent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the request for relief.

Section 1.337(d)-2(a)(1), as in effect for the year at issue, provided 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(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(c)(5)(i), as in effect for the year at issue, provided, in part, that any loss suspended under § 1.1502-35(c)(1) or (c)(2) shall be allowed, to the extent otherwise allowable, on a return filed by the group of which the subsidiary was a member on the date of the disposition of subsidiary stock that gave rise to the suspended loss for the taxable year that includes the day before the first date on which the subsidiary (and any successor) is not a member of such group or the date the group

is allowed a worthless stock deduction under § 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.

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.

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 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 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 to file the Elections, provided Parent and Substitute Agent 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 Substitute Agent and Company Official & Tax Professional explain the circumstances that resulted in the failure to timely file valid Elections. The information establishes that Parent reasonably relied on a qualified tax professional 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 and Substitute Agent acted reasonably and in good faith, 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 Substitute Agent to file the Elections.

The above extension of time is conditioned on the Parent 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 the Parent Consolidated Group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether Parent qualifies substantively to make the Elections. Specifically, no opinion is expressed regarding whether or when the stock in Subsidiary 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,

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