

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:1-PLR-127222-01
Date:
August 22, 2001

Legend:

Successor =

Taxpayer =

Corp X =

Date A =

Date B =

Date C =

Date D =

Successor's
Company Official =

Tax Professional 1 =

Tax Professional 2 =

Authorized
Representative =

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This responds to your Authorized Representative's May 11, 2001 letter submitted on behalf of Successor (as successor to Taxpayer), requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.337(d)-5T(b) and (c), to be subject to the rules of § 1374 with respect to assets that Taxpayer held on Date B. Additional information was received in a letter dated July 19, 2001. The material information is summarized below.

Taxpayer was a calendar year taxpayer that used the accrual method of accounting. Taxpayer was a C corporation for the first two years of its existence before making a REIT election effective as of Date B. On Date A, Taxpayer had net unrealized built-in gain in its assets and C corporation net operating loss carryforwards. On Date C, in accordance with state law, Taxpayer merged with and into Corp X. Also, on Date C, in accordance with state law, Corp X merged with and into Successor.

Taxpayer's first return filed after March 8, 2000 was filed in September of 2000, but for various reasons, did not contain a § 1374 election. The fact that Taxpayer had not properly made a § 1374 election with this return was discovered by Tax Professional 1 on Date D.

On February 7, 2000, the IRS and Treasury issued temporary regulations under § 337(d). These regulations provide a special rule in § 1.337(d)-5T(b) and (c) that allow a RIC or REIT to make a retroactive election to apply the rules of § 1374 with respect to assets formerly held by a C corporation, in lieu of recognizing the built-in-gain with respect to these assets on the last day of its last C corporation taxable year. In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987 but before March 8, 2000, the election is made by attaching the statement described in § 1.337(d)-5T(b)(3) to the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

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. Section 301.9100-3(a).

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In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.337(d)-5T(c)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Successor (as successor to Taxpayer) to file the Election, provided that Successor (as successor to Taxpayer) shows that 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 Successor (as successor to Taxpayer), Successor's Company Official, Tax Professional 1, Tax Professional 2, and Authorized Representative explain the circumstances that resulted in the failure to file the Election. The information establishes that Successor (as successor to Taxpayer) relied on a qualified tax professional, that the professional failed to make, or advise Successor (as successor to Taxpayer) to make, the Election, and that the interests of 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 made, we conclude that Successor (as successor to Taxpayer) has shown that 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. Accordingly, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for Successor (as successor to Taxpayer) to file the Election, by amending Taxpayer's return for the year ending December 31, 1999, by attaching thereto the statement described in § 1.337(d)-5T(b)(3). A copy of this letter should be attached to the Election.

The above extension of time is conditioned on (1) Successor (as successor to Taxpayer) in fact filing all necessary returns or amended returns consistent with this Election within 120 days of the date on this letter; and (2) taxpayers' (Taxpayer's and Successor'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 timely made (taking into account the time value of money). No opinion is expressed as to the taxpayer'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 the taxpayer's tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax 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 § 301.9100-1, we relied on certain statements and representations made by the taxpayer. However, all essential facts are subject to verification. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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

We are sending a copy of this letter to your authorized representatives, pursuant to a power of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Ken Cohen
Senior Technician Reviewer, Branch 3