

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:

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PLR-158057-04

Date:

February 15, 2005

Parent =

Intermediate =

Target =

Purchaser =

Purchasing
Group Parent =

Date A =

Date B =

Year 1 =

a =

b =

c =

Country A =

Tax Professional =

Company Official =

Dear :

This letter responds to a letter dated October 26, 2004, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file the statement required by § 1.337(d)-2T(c) (the "Election") to recognize some or all of a loss upon the disposition of the stock of a subsidiary. Additional information was received in letters dated November 5, 2004, and December 1, 2004. The material information is summarized below.

Parent is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis. Parent owns all of the stock of Intermediate which in turn owned all of the stock of Target. On Date A, Intermediate sold all of the shares of Target to Purchaser, a subsidiary of Purchasing Group Parent, a Country A corporation, for \$a. A § 338(h)(10) election was made in connection with the sale. Parent has represented that the sale pursuant to the § 338(h)(10) election resulted in a worthless stock deduction that was reported on the Parent group consolidated income tax return for Year 1. (The amount reported was \$b; in its request for this ruling, Parent has represented that the correct amount of the worthless stock deduction is \$c.)

The statement described in § 1.337(d)-2T(c) to be filed in connection with the disposition of Target stock was due on Date B, the due date (including extensions) of the Year 1 Parent group consolidated federal income tax return, but for various reasons a valid 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) has not expired for any of the Parent consolidated group's, Purchaser's, or Target's taxable years that would have been affected by the Election had it been timely filed.

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 301.9100-1(b) defines a 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. Section 301.9100-2 provides automatic extensions of time for making certain elections. 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).

In this case, the time for filing the Election is fixed by the regulations. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows 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, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown 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 § 301.9100-3, until 45 days from the date on this letter, for Parent to file a consolidated federal income tax return for the Parent group for Year 1, amended to include the Election, and to modify the amount of the worthless stock deduction, as described above. A copy of this letter must be attached to the return.

The above extension of time is conditioned on the Parent 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 timely made (taking into account the time value of money). No opinion is expressed as to the Parent group's tax liability for the years involved. A determination thereof will be made by the applicable 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 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. In particular, we express no opinion as to whether the Parent group may claim a worthless stock deduction in connection with the disposition of Target stock or as to the amount of any such deduction. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. 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.

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.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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