

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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PLR-126575-10

Date:

August 12, 2010

Legend

Foreign Parent =

Foreign Sub =

Taxpayer =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-126575-10	2
Country A	=
State A	=
State B	=
State C	=
Business 1	=
Business 2	=
Date 1	=
X	=
Company Official	=
Tax Professional	=

Dear :

This letter responds to a letter dated June 23, 2010, submitted on behalf of Taxpayer by its authorized representatives, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under §§ 1.1502-36(d)(6) and 1.1502-36(e)(5) (an “Election”). More specifically, Taxpayer is requesting an extension of time to file a “Section 1.1502-36 Statement” for Sub 2 in order to reduce the potential for loss duplication and thereby reduce or avoid attribute reduction at the Sub 2 level. Additional information was submitted in a letter dated August 4, 2010. The material information submitted is summarized below.

At the time of the Transfer (as defined below), Foreign Parent (a company incorporated in Country A) was the parent of an international group of companies engaged in Business 1 and Business 2 (among other businesses), and Foreign Sub (also incorporated in Country A) was its wholly owned subsidiary. Foreign Sub owned 100% of the stock of Taxpayer (a State A corporation), the common parent of an affiliated group of corporations that filed a life/non-life federal consolidated income tax return (the “Taxpayer Group”). The Taxpayer Group included, among other members, Sub 1 (a State A corporation wholly owned by Taxpayer), Sub 2 (a State B corporation wholly

owned by Sub 1), and Sub 3 (a State C corporation wholly owned by Sub 2). Sub 2 and Sub 3 were insurance companies subject to taxation under § 801.

On Date 1, Foreign Sub acquired Sub 1 from Taxpayer (the “Transfer”). The Transfer resulted in a \$X capital loss to Taxpayer that was subject to § 1.1502-36. The Transfer also resulted in the disaffiliation of Sub 2 and Sub 3 from Sub 1.

Taxpayer made a timely Election with respect to Sub 1 but failed to make an Election with respect to Sub 2 (or any other subsidiary).

After the due date for an Election had passed, Taxpayer discovered that it had failed to make a valid Election with respect to Sub 2. Subsequently, this request was submitted, under §§ 301.9100-1 and 301.9100-3, for an extension of time to file an Election to reduce Sub 1’s basis in Sub 2 stock. The period of limitations on assessment under § 6501(a) has not expired for the Taxpayer Group’s taxable year for which the Election should have been filed or for any taxable year that would be affected by the Election had it been timely filed.

Section 1.1502-36 provides rules for adjusting consolidated group members’ bases in subsidiary (“S”) stock and for reducing S’s attributes when a member (“M”) transfers a loss share of S stock. If § 1.1502-36 applies, § 1.1502-36(b) may redetermine members’ bases in their shares of S stock; if the transferred share is still a loss share thereafter, § 1.1502-36(c) may reduce M’s basis in the transferred loss share; and if the transferred share is still a loss share thereafter, § 1.1502-36(d) may reduce attributes of S and any subsidiaries that are lower-tier to S. These rules apply, and any required adjustments are given effect, immediately before the transfer. Section 1.1502-36(a).

Section 1.1502-36(f)(7) defines a “loss share” as a share of stock with a basis that exceeds its value.

Section 1.1502-36(f)(10)(i) states that, except as otherwise provided in § 1.1502-36(f)(10)(ii) (which contains exceptions not relevant here), M transfers a share of S stock on the earliest of certain dates, including the date that M and S cease to be members of the same group and the date that a nonmember acquires the share from M.

Notwithstanding the general attribute reduction rules of § 1.1502-36(d), the parent of a consolidated group (“P”) may elect to reduce the potential for loss duplication, and thereby may reduce or avoid attribute reduction. Section 1.1502-36(d)(6)(i). To the extent of S’s attribute reduction amount, P may elect (A) to reduce all or any portion of members’ bases in transferred loss shares of S stock, (B) to reattribute all or any portion of certain S attributes to the extent they would otherwise be subject to reduction under § 1.1502-36(d), or (C) any combination thereof. If shares of stock of more than one subsidiary are transferred in the transaction and elections to reduce loss duplication under § 1.1502-36(d)(6) are made with respect to transfers of stock of subsidiaries in

multiple tiers, effect is given to the elections from the lowest tier to the highest tier. The effect of any stock basis reduction or reattribution of losses immediately tiers up under § 1.1502-32 to adjust members' bases in higher-tier shares. Section 1.1502-36(d)(6)(iii)(B).

Section 1.1502-36(e)(5), which sets forth the time and manner for making an election to reduce loss duplication under § 1.1502-36(d)(6), provides that such an election is irrevocable and shall be made in the form of a statement titled "Section 1.1502-36 Statement." The statement must be included on or with the group's timely filed return for the taxable year of the transfer of S stock to which the election relates (or, in the case of an intercompany transfer, the year in which the intercompany item from the transfer is taken into account).

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.

Section § 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. 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).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-36(e)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file an Election with respect to Sub 2, provided Taxpayer 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 Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election for Sub 2. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the information, affidavits, and representations submitted, we conclude that Taxpayer 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 Taxpayer to file an Election for Sub 2.

The above extension of time is conditioned on the tax liability (if any) of the Taxpayer Group and the former members of the Taxpayer Group being not lower, in the aggregate, for all years to which the Election applies and all subsequent years, 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 tax liability for the years involved. A determination thereof will be made by the 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 with respect to whether Taxpayer qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects 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 Taxpayer, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still 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.

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.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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