

## 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.

Telephone Number:

Refer Reply To:

CC:CORP:5

PLR-113427-11

Date:

July 27, 2011

TY:

Legend

Parent =

Sub 1 =

Buyers =

Date A =

Date B =

Parent Official =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated March 23, 2011, 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 a statement under § 1.337(d)-2(c) of the Income Tax Regulations (the "Election") that was required to be filed with its consolidated Federal income tax return for the taxable year ended Date B. The material information submitted for consideration is summarized below.

For the taxable year ended Date B Parent was the common parent of a consolidated group that included Sub 1, which Parent wholly-owned. On Date A, Parent sold the stock of Sub 1, along with certain other stock and assets, to Buyers.

An election under §§ 1.337(d)-2(c)(3) to recognize the loss with respect to the disposition of the stock of Sub 1 was required to be filed with or as part of Parent's timely filed return for its taxable year ended Date B. For various reasons, however, the Election was not filed. Subsequently, this request, under § 301.9100-3, for an extension of time to file the Election was submitted.

Section 1.337(d)-2(a)(1) provides 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 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 on or after March 3, 2005, and before September 17, 2008.

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 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 Parent to file the Election, provided Parent establishes 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, Parent 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, 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 facts and information submitted, including the representations that have been made, we conclude that Parent has established 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. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on Parent's consolidated 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 had the Election been timely made (taking into account the time value of money). No opinion is expressed as to Parent's consolidated group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax return(s) involved.

We express no opinion with respect to whether Parent 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. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 first-named authorized representative.

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.

Sincerely,

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