

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B01
PLR-118520-12
Date:
September 24, 2012

Parent =

Subsidiary =

Date 1 =

Date 2 =

Corporate Official =

Dear :

This letter responds to a letter dated April 27, 2012, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time for the consolidated group of which Parent is the common parent to file an election to reattribute certain tax attributes from Subsidiary to Parent under § 1.1502-36(d)(6)(i)(B) of the Income Tax Regulations (the Election). Additional information was submitted in documents dated May 23, 2012, August 1, 2012, and September 5, 2012. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group. On Date 1, Parent sold the stock of Subsidiary to a buyer outside of the consolidated group at a loss. The stock sale was subject to the unified loss rule (ULR) of § 1.1502-36. After application of the first two steps in the ULR under § 1.1502-36(b) and § 1.1502-36(c), there was an attribute reduction amount under § 1.1502-36(d). Parent did not want the default rule of § 1.1502-36(d)(1) to apply, which would preserve the stock loss but reduce Subsidiary's tax attributes. Parent also did not want Subsidiary to retain its tax attributes. Instead,

Parent wished to file the Election to reattribute a net operating loss (NOL) carryover from Subsidiary to Parent.

Parent was required to file the Election in order to reattribute the NOL carryover from Subsidiary to Parent. The Election was due on Date 2, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been 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 the Parent Group's consolidated income tax return for the taxable year in which the sale of Subsidiary stock occurred or any subsequent taxable year. Parent 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. Parent has also represented that no portion of the attributes of Subsidiary that have or will be reattributed pursuant to an election under § 1.1502-36(d)(6)(i)(B) have been or will be used by Subsidiary.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Section 1.1502-36(b) and (c) provides rules that may reduce consolidated group members' basis in loss stock of a subsidiary when the stock is transferred. If the subsidiary's stock is still loss stock after the application of § 1.1502-36(b) and (c), the general rule of § 1.1502-36(d)(1) reduces the tax attributes of S to the extent they duplicate a net loss on shares of S stock transferred by members in one transaction. However, notwithstanding the above general rule, P may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. Under § 1.1502-36(d)(6)(i), P may elect (A) to reduce all or any portion (including any portion in excess of a specified amount) of members' bases in transferred loss shares of S stock; (B) to reattribute all or any portion (including any portion in excess of a specified amount) of S's Category A (capital loss carryovers), Category B (net operating loss carryovers), and Category C attributes (deferred deductions), to the extent they would otherwise be subject to reduction under § 1.1502-36(d); or (C) any combination thereof.

Section 1.1502-36(e)(5) states that the elections provided by § 1.1502-36 are irrevocable and made in a statement entitled "Section 1.1502-36 Statement" that must be included on or with the group's timely filed return (original or amended, if filed by the

due date of the return, including extensions) for the taxable year of the transfer of the subsidiary stock to which the election relates.

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). 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. Section 301.9100-3(a).

The election by a consolidated group to reattribute tax attributes from a subsidiary to the common parent under § 1.1502-36(d)(6)(i)(B) is a regulatory election. 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 to the satisfaction of the Commissioner 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 Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the affidavits submitted and 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, provided the Parent Group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

Parent may file the Election under § 1.1502-36 to reattribute an NOL carryover from Subsidiary to Parent by filing a "Section 1.1502-36 Statement" that is included on or with Form 1120X, Amended U.S. Corporation Income Tax Return, for the taxable year that includes Date 1, in accordance with the procedure set forth in § 1.1502-36(e)(5). A copy of this letter must be attached to the Form 1120X. If Parent files Form 1120X electronically, Parent may satisfy the requirement of attaching a copy of

this letter by attaching a statement to the Parent Group's amended return that provides the date and control number (PLR-118520-12) of this letter ruling.

The above extension of time is conditioned on the Parent Group's and Subsidiary's tax liability, if any, not being 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). We express no opinion as to the Parent Group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent 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 Internal Revenue Code or 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 this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Parent and Company Official. The Director, however, should verify all essential facts. 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 letter ruling is directed only to the taxpayer 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, 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)

cc :