

Internal Revenue Service

Number: **201628019**

Release Date: 7/8/2016

Index Number: 1502.36-00, 9100.20-00

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:2

PLR-139702-15

Date:

April 13, 2016

Legend

Parent =

Sub1 =

Holding Company =

HC Sub =

Date 1 =

Company Official =

Tax Professional =

Dear _____ :

This is in response to a letter dated November 24, 2015, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations. In particular, Parent is requesting an extension of time for Parent to file an election under § 1.1502-36(d)(6)(i)(A) for the taxable year ended Date 1, for Parent to reduce its adjusted basis in the stock of Sub1 by the attribute reduction amount (the "Election"). Additional information was submitted in documents dated January 11, 2016. The material information is summarized below.

During the year at issue, Parent was the common parent of a consolidated group (the "Parent Group"). Parent Group consisted of: Parent; Parent's wholly-owned subsidiary, Sub1; and entities wholly-owned by Sub1 or Sub1's subsidiaries.

Pursuant to a restructuring on Date 1, the following steps took place. Parent's shares in Sub1 were cancelled and new Sub1 stock was issued to new equity holders. The Sub1 stock issued to the new equity holders was automatically contributed to newly formed Holding Company in exchange for stock in Holding Company. Holding Company then immediately contributed the Sub1 shares to its wholly-owned subsidiary, HC Sub. As a result of the Date 1 restructuring, Parent was no longer affiliated with Sub1 and Sub1's subsidiaries (direct or indirect), and constituted a transfer by Parent of the Sub1 stock under § 1.1502-36(f)(10).

An election under § 1.1502-36 with respect to Parent's transfer of Sub1 stock was due by the due date (including extensions) of Parent Group's consolidated return for the taxable year ending Date 1. However, for various reasons, no election was made. Subsequently, Parent submitted this request, under § 301.9100-3, for an extension of time to file the Election.

Parent has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could have been imposed under § 6662 at the time Parent requested relief and for which the new position requires or permits a regulatory election for which relief is requested.

Section 1.1502-36 provides rules for adjusting members' (M) basis in stock of a subsidiary (S) and for reducing S's attributes when M transfers a loss share of S stock. Section 1.1502-36(a)(1).

Section 1.1502-36(d) provides rules to reduce attributes of S and its lower-tier subsidiaries to the extent they duplicate a net loss on shares of S stock transferred by members in one transaction.

Section 1.1502-36(d)(6)(i) provides that notwithstanding the general operation of § 1.1502-36(d), the parent of a consolidated group (“P”) may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. Under this election, 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, Category B, and Category C attributes, to the extent they would otherwise be subject to reduction under § 1.1502-36(d); or (C) any combination thereof.

Section 1.1502-36(d)(6)(ii) provides that an election to reduce loss duplication under § 1.1502-36(d)(6) is made in the manner provided in § 1.1502-36(e)(5).

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 reduce a member’s basis in its loss shares of subsidiary stock under § 1.1502-36(d)(6)(i)(A) 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, 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, and 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) and (v).

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, 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, provided that 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 should file the Election in accordance with § 1.1502-36(e)(5). Parent Group's returns must be amended to attach the election statements required by § 1.1502-36(e)(5). A copy of this letter must be attached to the election statement. Alternatively, if Parent files its returns 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-139702-15) of this letter ruling.

The above extension of time is conditioned on the Parent 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 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 or any of its members' tax liabilities. 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, Company Official, and Tax Professional. 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 requesting it. Section 6110(k)(3) of the Code 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)

cc: