

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:B3

PLR-118747-20

Date:

January 26, 2021

Legend:

Parent =

Sub1 =

Sub1Subsidiaries =

Date =

Company Officials =

Tax Professionals =

Dear :

This letter responds to your authorized representatives' letter dated August 27, 2020, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations. Specifically, Parent is requesting an extension of time for Parent to file an election under §1.1502-36(d)(6)(i)(B) for the taxable year ending Date, for Parent to reattribute certain attributes from Sub1 and the Sub1Subsidiaries to Parent (the "Election"). The material information is summarized below.

During the taxable year ending Date, Parent was the common parent of a consolidated group ("Parent Group") that included Sub1 and its two subsidiaries (Sub1Subsidiaries) (Sub1 and Sub1Subsidiaries are collectively referred to as "the Subsidiaries"). On Date, Parent sold to an unrelated party all the outstanding shares of Sub1 (along with Sub1Subsidiaries) at a loss. The sale was subject to the unified loss rule of §1.1502-36.

Parent intended to file the Election, but for various reasons a valid Election was not timely 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 section 6501(a) has not expired for the Parent Group's consolidated income tax return for the taxable year in which the sale of the Sub1 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 section 6662. Parent has also represented that no portion of the attributes of the Subsidiaries that have or will be reattributed to Parent pursuant to an election under §1.1502-36(d)(6)(i)(B) have been or will be used by the Subsidiaries in a separate return year.

Section 1.1502-36 provides rules for adjusting members' bases in stock of a subsidiary (S) and for reducing S's attributes when a member (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 (each as defined in §1.1502-36(d)(4)), 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 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, Company Officials, and Tax Professionals explain the circumstances that resulted in the failure to timely file the 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(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, 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 Parent Group qualifies substantively to file the Election, we grant an extension of time under §301.9100-3, until ninety (90) 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 return for the taxable year ending Date must be amended to attach the election statement 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-118747-20) 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 made timely (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 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 Officials, and Tax Professionals. 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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Thomas I. Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: