

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-102948-21

Date:

June 29, 2021

Legend

Parent =

Sub =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to your authorized representatives' letter dated January 30, 2021, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to make an election. Specifically, the extension is being requested to file an election under §1.1502-36(d)(6)(i)(A) of the Income Tax Regulations for the taxable year including Date 1 to reduce Parent's adjusted basis in the stock of Sub by its attribute reduction amount (the "Election"). The material information submitted for consideration is summarized below.

During the taxable year including Date 1, Parent was the common parent of a consolidated group (the "Parent Group") that included Parent and Sub. As a result of a transaction on Date 1, Parent and Sub ceased to be members of the same affiliated group.

An election under §1.1502-36 with respect to Parent's transfer (within the meaning of §1.1502-36(f)(10)) of Sub's stock was due by the due date (including extensions) of Parent Group's consolidated return for the taxable year including Date 1. However, for various reasons, no election was made. On Date 2, Parent dissolved. Sub is designated to act as substitute agent for the Parent Group for the taxable year of the Parent Group including Date 1. After discovering the missed Election, this request was submitted, under §301.9100-3, for an extension of time to file the Election.

It has been represented that no member of Parent Group is seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662. In addition, notwithstanding the missed Election, Parent and Sub have treated the Election as having been made.

Section 1.1502-36 provides rules for adjusting a members' basis 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 provision, 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). 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. 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 the Parent Group to file the Election, provided it 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 Sub, as substitute agent for the Parent Group, 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), (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that the Parent Group has shown 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. Accordingly, provided that the Parent Group qualifies substantively to file the Election, an extension of time is granted under §301.9100-3, until 90 days from the date on this letter, for the Election to be filed.

The Parent Group should file the Election in accordance with §1.1502-36(e)(5). The Parent Group's tax return for the tax year including Date 1 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 the Parent Group files its returns electronically, it may satisfy the requirement of attaching a copy of this letter by attaching a statement to the amended return that provides the date and control number (PLR-102948-21) 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 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.

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 the Parent Group qualifies substantively to make the Election or the amount of stock basis reduction applicable. 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 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 this letter.

For purposes of granting relief under §301.9100-3, we have relied on certain statements and representations made by Sub, as substitute agent for the Parent Group, 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 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 with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: