

Internal Revenue Service

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Department of the Treasury

**P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:DOM:CORP:2 - PLR-102260-98
Date: December 4, 1998**

LEGEND:

Parent =

Sub #1 =

Sub #2 =

Company Official =

Outside Attorney =

Authorized
Representatives =

Date A =

Date B =

Date C =
Date D =
Date E =
Date F =
\$X =
\$Y =
\$Z =
A =
B =
C =
Business X =

This responds to your Authorized Representatives' letter dated January 28, 1998, requesting an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for Parent to make an election. Parent is requesting the extension to file an election under § 1.1502-13(l)(3) of the Income Tax Regulations, with its return for its 1995 taxable year (hereinafter referred to as the "Election"). Additional information was submitted in letters dated April 24, 1998, August 20, 1998 and September 30, 1998. The material information submitted is summarized below.

Parent is the common parent of an affiliated group that joins in the filing of a consolidated return. Parent's consolidated group uses the accrual method of accounting and files its Federal income tax return on a calendar year basis. Sub #1 is a wholly-owned subsidiary of Parent, and prior to Date A, Sub #2 was a wholly-owned subsidiary of Sub #1. Sub #1 is included in Parent's consolidated income tax return, and Sub #2 was included in Parent's until the below-described disaffiliation occurred. Parent and its subsidiaries are generally engaged in Business X.

On Date A, Sub #1 distributed A shares of Sub #2 stock to Parent. As a result of this

distribution, \$X of gain was recognized under § 311(b) of the Internal Revenue Code, but deferred under § 1.1502-14 (as in effect prior to amendment by T.D. 8597, 1995-2 C.B. 147). On Date B, Parent sold B shares of its Sub #2 stock to the public. As a result of this sale, Sub #2 ceased to be a member of the Parent consolidated group. On Date C, Sub #1 distributed C shares of Sub #2 stock to Parent. This distribution resulted in the recognition of \$Y of § 311(b) gain. This gain was also deferred under § 1.1502-14 (as in effect prior to amendment by T.D. 8597).

On Date D, Sub #2 began a stock re-purchase plan (the “Plan”). The redemptions occurring as part of the Plan were not pro rata to all Sub #2 shareholders. A portion of Parent’s Sub #2 stock was redeemed as part of the Plan in order to maintain the consolidated group’s ownership of Sub #2 stock at a constant percentage.

In July 1995, the Service published new intercompany transaction regulations under § 1.1502-13 governing the treatment of transactions between members of a consolidated group (“New Regulations”). See T.D. 8597. Prior to the publication of the New Regulations, the taxation of intercompany transactions was controlled exclusively by the intercompany regulations under §§ 1.1502-13 and -14, as in effect prior to amendment by T.D. 8597 (the “Old Regulations”).

The New Regulations are generally only effective for intercompany transactions occurring in taxable years beginning on or after July 12, 1995. See § 1.1502-13(l)(1) of the New Regulations. Intercompany transactions that occurred in taxable years beginning prior to July 12, 1995 continue to be subject to the Old Regulations regardless of when the restoration event requiring the intercompany item to be taken into account occurs.

Section 1.1502-13(l)(3) of the New Regulations permitted taxpayers to elect to have the New Regulations apply to certain stock elimination transactions (i.e., those transactions described in § 1.1502-13(l)(3)(ii)) that occurred in a year to which the Old Regulations would otherwise apply. In order to make the election under § 1.1502-13(l)(3) of the New Regulations, taxpayers were required to include a statement making the election with their original return for the tax year containing July 12, 1995. Those taxpayers that did not make the election continue to take their intercompany items into account under the restoration rules of the Old Regulations.

On Date E, Parent filed its Federal income tax return for its taxable year that included July 12, 1995. The Election was not attached to the return or otherwise filed. On Date F, (which was after the due date for the Election), Company Official and Outside Attorney discovered that the Election was not timely filed. The period of limitations under § 6501(a) has not expired for Parent’s taxable year in which the Election was due, or for any taxable year affected by the Election.

Parent has represented that the redemptions that occurred as part of the Plan constituted dividends within the meaning of § 301, and “extraordinary dividends” within the meaning of § 1059(e)(1)(A). Additionally, Parent has represented that if an extension of time to file the

Election is not granted its tax liability will not increase.

Parent has represented that, other than the transactions described above, the consolidated group has not negotiated or contracted for, is not obligated to undergo or engage in or consummate, and has not engaged in or consummated, any transaction described in the § 1.1502-13(l)(3)(ii) of the New Regulations, and that it has no present intention to engage in such a transaction.

Section 1.1502-77(a) provides that the common parent (for the purposes relevant in this case), shall be the sole agent for each subsidiary in the group, duly authorized to act for each member in its own name in all matters relating to the tax liability of the consolidated return year.

Under § 301.9100-1(c) the Commissioner may 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 Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 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 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).

In this case, Parent was required to file the Election by Date E. However, for various reasons a valid Election was not filed. Subsequently, Parent filed this request, under § 301.9100-1, for an extension of time to file the Election. The time for filing the Election is fixed by the regulations (*i.e.*, § 1.1502-13(l)(3) of the New Regulations). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant Parent an extension of time to file the Election, provided Parent demonstrates 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, Outside Attorney and Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information also establishes that tax professionals were

responsible for the Election, Parent relied on them to timely make the Election, and granting an extension will not prejudice the interests of the government.

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Election.

The above extension of time is conditioned on: (1) Parent not engaging in or consummating (or negotiating or becoming obligated to consummate) any transaction described in § 1.1502-13(l)(3)(ii) of the New Regulations with respect to the stock of Sub #2, for 12 months from the date of issuance of this letter; and (2), the tax liability of Parent, Sub #1, and Sub #2 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. No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the District Director's office upon audit of the Federal income tax return(s) involved. Furthermore, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' liability is lower than it would otherwise be without the Election. Section 301.9100-3(c). In addition, Parent may request a waiver of the above 12-month restriction with respect to a specific transaction by a private letter ruling request, provided the appropriate evidence under § 301.9100-3(b)(3)(iii) is submitted, and the taxpayers keep open the period of limitations under § 6501(a) for the taxable year the Election was due and for all taxable years affected by the Election.

Parent (as the common parent of the consolidated group), is instructed to amend the consolidated group's 1995 Federal income tax return, and file the Election in accordance with provisions of the applicable regulations containing the Election (i.e., a new election statement must be executed on or after the date of this letter, which grants an extension, and filed in accordance with the instructions in the regulations). Additionally, a copy of this letter must be attached to the amended return.

No opinion is expressed as to whether the consolidated group qualifies to make the Election. In addition, 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 effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by the taxpayers, their employees and representatives. However, the District Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, shall apply.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office a copy of this letter is being sent to your Authorized Representatives.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By *Bernita L. Thigpen*
Bernita L. Thigpen
Deputy Assistant
Chief Counsel (Corporate)