Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200047043**
Release Date: 11/24/2000
Index Number: 1502.20-00
9100.28-00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B02-PLR-104649-00
Date:
August 29, 2000

LEGEND:

Parent =

Subsidiary =

Company Official 1 =

Company Official 2 =

Authorized Representatives =

Z =

Date A =

Date B =

Year C =

Dear :

This letter responds to your authorized representatives' letter dated February 28, 2000, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file a statement. Parent (as the common parent of the consolidated group) is requesting an extension of time to file a statement of allowed loss under § 1.1502-20(c)(3) of the Income Tax Regulations (sometimes referred to as the "Election"), for its taxable year ending on Date A. The Election is with respect to the portion of the alleged worthless stock loss (on Parent's stock of Subsidiary) that Parent may otherwise deduct under § 165(g) of the Internal Revenue Code. Additional information was received in letters dated April 28, June 5, and August 23, 2000. The material information is summarized below.

Parent is the common parent of a consolidated group that has a taxable year ending on the last Saturday of November and that uses the accrual method of accounting. Subsidiary was wholly-owned by Parent and was included in Parent's consolidated federal income tax return.

During the taxable year ending on Date A, Parent determined that Subsidiary should cease operations, liquidate its assets and pay its liabilities. By the end of the taxable year ending on Date A, Subsidiary had stopped its operations and ceased to be a going concern.

On or before Date B, Parent filed its consolidated federal income tax return for its taxable year ending on Date A. On the return, Parent deducted $Z as an ordinary loss under § 165(g)(3), which represented that portion of its basis in the stock of Subsidiary that it was otherwise permitted by § 1.1502-20(c) to deduct. Parent did not reattribute any of Subsidiary's losses to itself pursuant to § 1.1502-20(g). Parent represents that it filed its return for its taxable year ending on Date A consistent with the Election. However, for various reasons, Parent did not attach the Election to the return or otherwise file it. The Service is examining Parent's return for its taxable year ending on Date A.

Parent represents that Subsidiary's stock became worthless during its taxable year ending on Date A and that it is entitled to a worthless stock deduction under § 165(g) for its Subsidiary's stock. Parent also represents that part of the § 165(g) loss is disallowed under § 1.1502-20(a)(1) and that part is allowable as a deduction under § 1.1502-20(c)(1).

The Election was due on Date B, as an attachment to the return. However, for various reasons the Election was not attached to the return or otherwise filed. During the first week of Year C (which was after the due date for the Election) it was

discovered that the Election had not been filed. Subsequently, this request was submitted to the Service, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessments under § 6501(a) of the Code has not expired for Parent's (and Subsidiary's) taxable year in which the alleged loss occurred, the taxable year in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Parent, as the common parent of the consolidated group, was required by § 1.1502-20(c)(3) to make and attach the Election to its return for the year of disposition, in order to deduct the amount (if any) of the loss recognized on the disposition that is not disallowed under § 1.1502-20(a)(1).

Section 1.1502-20(a)(1) provides that, as a general rule, no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary. Section 1.1502-20(a)(2) provides that a disposition means any event in which gain or loss is recognized, in whole or in part (e.g., a worthless stock loss).

Section 1.1502-20(c)(1) provides, as a general rule, that the amount of loss disallowed under § 1.1502-20(a)(1), and the amount of basis reduction under § 1.1502-20(b)(1) with respect to a share of stock, shall not exceed an amount determined by a specified formula. Section 1.1502-20(c)(3) provides that the § 1.1502-20(c)(1) limitation on the amount of a loss disallowed and basis reduction made applies only if the statement specified in § 1.1502-20(c)(3), and entitled "ALLOWED LOSS UNDER SECTION 1.1502-20(c)," is filed with the taxpayer's return for the year of disposition or deconsolidation.

Section 1.1502-77(a) provides that the common parent, for all purposes (other than for several purposes not relevant here), shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year.

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.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. 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 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, the time for filing the Election was fixed by the regulations (i.e., § 1.1502-20(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent shows 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 Company Officials and Authorized Representatives explain the circumstances that resulted in the failure to file the Election. The information establishes that competent tax professionals were responsible for the Election, that they were aware of all relevant facts, and that Parent relied on them to make the Election. The information also establishes that Parent requested relief before the failure to make the Election was discovered by the Internal Revenue Service and that Parent had filed its return as if the Election had been made and consistent therewith. Finally, the information establishes that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has established that 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, we grant an extension of time under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent (as the common parent of the consolidated group) to file the Election with respect to the above described disposition of Subsidiary stock.

The above extension of time is conditioned on: (1) Parent’s otherwise being entitled to a worthless stock deduction under § 165(g); and (2) the taxpayers' (Parent’s and Subsidiary’s) tax liability being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely filed (taking into account the time value of money). 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 or examination of the Federal income tax returns involved. Furthermore, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether the Subsidiary stock was worthless; (2) if the Subsidiary stock was worthless, when it became worthless; (3) if the Subsidiary

stock was worthless, whether Parent is entitled to take a deduction under § 165(g); (4) if the Subsidiary stock was worthless and Parent was entitled to take a deduction under § 165(g), as to the amount of the deduction (if any) and when such deduction may be taken (if at all); and (5) the amount of loss (if any), and the amount of the loss (if any) disallowed and/or allowed under §§ 1.1502-20(a)(1) and 1.1502-20(c)(1) (i.e., computed without taking into account the requirement under § 1.1502-20(c)(3)).

Parent should file the Election in accordance with § 1.1502-20(c)(3). That is, Parent must amend its return for its taxable year ending on Date A to attach to such return the § 1.1502-20(c)(3) statement and a copy of this letter. See § 1.1502-20(c)(3).

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 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 taxpayer, its 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, continue to apply.

Copies of this letter are being sent to your Authorized Representatives, pursuant to the power of attorney on file in this office.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Associate Chief Counsel (Corporate)

by: _____
Ken Cohen, Acting Chief, Branch 3