

Internal Revenue Service

Department of the Treasury

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Date:
November 13, 2001

LEGEND:

Parent =

Loss Shareholders =

Subsidiary =

Business A =

Date A =
Date B =

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Date C =

Date D =

Date E =

Company Official =

Tax Professional =

a =

We respond to a letter dated September 10, 2001, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file a statement. The extension is being requested for Parent to file a statement of allowed loss under § 1.1502-20(c) of the Income Tax Regulations (Election), effective for their taxable year ending on Date A. Additional information was received in a letter dated October 24, 2001. The material information submitted for consideration is summarized below.

Parent, Loss Shareholders, and Subsidiary are domestic corporations who use the accrual method of accounting. Parent is the common parent of an affiliated group of corporations that file a consolidated Federal income tax return and are involved in several lines of business, including Business A. Among those corporations in the affiliated group before Date C were Loss Shareholders and Subsidiary.

Subsidiary was formed on Date B in order to conduct Business A for Parent and the consolidated group. Assets involved in Business A and stock in subsidiaries that conducted Business A were transferred from members of the consolidated group (including Loss Shareholders) to a holding company in exchange for holding company stock. All the holding company stock was then contributed by members of the consolidated group to Subsidiary in exchange for the stock of Subsidiary. Subsidiary became wholly owned by members of the consolidated group including Loss Shareholders.

On Date C, Subsidiary completed an initial public offering (IPO) of approximately a percent of its stock. As a result of the IPO, Subsidiary was deconsolidated from Parent's consolidated group. At the time of the deconsolidation, Parent alleges that the Loss Shareholders had built-in losses with respect to their shares in Subsidiary.

On or about Date E (after Date D, the due date for the Election), Tax Professional discovered that the Election should have been filed. The statute of limitations on assessment under § 6501 has not expired for Parent's, consolidated group's, or Subsidiary's taxable years for which they want to file the Election or for any taxable year that would be affected by the Election.

Section 1.1502-20(a)(1) provides that, as a general rule, no deduction is allowed

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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(b) provides that, in the event of a deconsolidation, a consolidated group member must reduce its basis in the stock of a subsidiary to the fair market value of that stock if the member's basis in the stock exceeds the fair market value.

Section 1.1502-20(c)(1) provides 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 the sum of the amounts set forth in §§ 1.1502-20(c)(1)(i), (ii), and (iii). Section 1.1502-20(c)(3) further provides that § 1.1502-20(c)(1) only applies if a statement of allowed loss is filed with the taxpayer's return for the year of the disposition or deconsolidation.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the 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 (§ 301.9100-1(a)). Section 301.9100-2 provides automatic extensions of time for making certain elections. 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 (§ 301.9100-3(a)).

In this case, the time for filing the Election is fixed by the regulations (§ 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure to make the regulatory election was discovered by the Service, that Parent relied on a qualified tax professional, that the tax professional failed to file, or advise Parent to file, the Election, and that the government will not be prejudiced if relief is granted (§ 301.9100-3(b)(1)(v)).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown 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, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for Parent to file the Election.

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The above extension of time is conditioned on the taxpayers' (Parent's, consolidated group's, and Subsidiary's) tax liability (if any) 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 made (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 Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' liability is lower (§ 301.9100-3(c)).

Parent must amend its return for its taxable year ending on Date A to attach to the return the Election and information set forth in § 1.1502-20(c)(3). In addition, Parent should attach a copy of this letter to the amended return.

We express no opinion as to whether Loss Shareholders' basis in the stock of Subsidiary exceeded its value immediately before Date C, and if so, the amount of such excess that is not reduced under § 1.1502-20(c)(1), if any.

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 tax effects or consequences 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. The facts contained in the statements and representations, however, are subject to verification. 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.

This ruling is directed only to the taxpayer(s) 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, the original copy of this letter is being sent to Parent's authorized representative.

Sincerely yours,
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)