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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:B02
PLR-155810-07

Date:
February 06, 2008

Parent =

Corporation 1 =

Corporation 2 =

Corporation 3 =

Sub 1 =

LLC =

Former Company Official =

Date A =

Date B =

Date C =

Year 1 =

a =

Dear :

This letter responds to a letter dated December 10, 2007, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was received in a letter dated January 29, 2008. Parent is requesting an extension to file the statement described in § 1.337(d)-2T(c) as in effect on Date C (hereinafter, the "Election") with respect to shares received in a transaction described below. The material information is summarized below.

During the years at issue, Parent was the common parent of an affiliated group of corporations that filed a consolidated Federal income tax return on a calendar year basis (the "Parent Group").

Prior to Date A, Parent held shares and warrants in Corporation 1 with a tax basis of $a. Corporation 1 was not a member of the Parent Group. On Date A, Parent contributed its shares and warrants in Corporation 1 to Corporation 2, a corporation that also was not a member of the Parent Group, in a transaction represented to have qualified as an exchange described in § 351. Concurrently, Corporation 3, a corporation unrelated to Parent, also contributed property to Corporation 2. In the exchange, Parent received certain stock of Corporation 2. Corporation 2 did not become a member of the Parent Group as a result of the Date A exchange.

On Date B, Parent transferred its Corporation 2 stock to Sub 1 in a transaction represented to have qualified as an exchange described in § 351. In the exchange, Parent received 100% of the stock of Sub 1, making Sub 1 a member of the Parent Group.

On Date C, Sub 1 merged with and into LLC, a newly-formed single-member limited liability corporation wholly owned by Corporation 3 and disregarded as separate from Corporation 3 for Federal tax purposes, in a transaction intended to qualify as a reorganization described in § 368(a)(1)(A). In the exchange, Parent received stock of Corporation 3. Corporation 3 did not become a member of the Parent Group in the Date C transaction. Parent determined its basis in the Corporation 3 stock received in the exchange by reference to the Sub 1 stock exchanged therefor.

On its Federal income tax return for the Year 1 (the year including Date C), Parent inadvertently failed to file the statement described in § 1.337(d)-2T(c) to preserve its tax basis in the stock of Corporation 3 received in the Date C transaction.

For the period at issue, § 1.337(d)-2T(b) generally provided that if a member's basis in subsidiary stock exceeds its value immediately before a deconsolidation of the stock, then the stock's basis must be reduced to its value. For this purpose, § 1.337(d)-2T(b)(2) defined a deconsolidation as any event that causes a share of subsidiary stock

that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member. An exception to the general rule of § 1.337(d)-2T(b) was set forth in § 1.337(d)-2T(c)(2). That subparagraph provided that a basis reduction is not required to the extent that the taxpayer establishes that the basis is not attributable to the recognition of built-in gain, net of directly related expenses, on the disposition of an asset. Section 1.337(d)-2T(c)(1) required that a taxpayer who qualifies for the exception under § 1.337(d)-2T(c) must attach a statement to its tax return entitled "section 1.337(d)-2T(c) statement." Section 1.337(d)-2T(c)(3) required that the taxpayer file that statement with its tax return for the year in which the deconsolidation takes place, and sets forth other filing requirements.

Section 1.337(d)-2T(d) provided that the successor rule and examples in § 1.1502-20(d) apply for purposes of § 1.337(d)-2, with appropriate adjustments to reflect the differences between the approach of § 1.337(d)-2 and that of § 1.1502-20. Section 1.1502-20(d)(1) provides that the loss disallowance rules of § 1.1502-20 apply, to the extent necessary to effectuate the purposes of that section, to any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of a subsidiary's stock.

Therefore, in order to preserve its basis in the Corporation 3 stock, Parent was required to file the Election with or as part of its consolidated group's income tax return for the year that included Date C. Sections 1.337(d)-2T(c), 1.337(d)-2T(d), and 1.1502-20(d). However, for various reasons, the Election was not filed. After the due date of 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 § 6501(a) has not expired for the Parent Group's taxable year for which it wants to make the Election or for any taxable years that would have been affected by the Election had it been timely filed.

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. 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 is fixed by the regulations (i.e., § 1.337(d)-2T(c)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 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 and Former Company Official 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, that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and 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 made, we conclude that it has been shown that Parent 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 § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election with respect to the stock of Corporation 3, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must amend its return for the year including Date C to include the Election as described above. A copy of this letter must be attached to the amended return. Alternatively, if Parent files its return electronically, Parent may satisfy the requirement of attaching a copy of this letter by attaching a statement to its return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the Parent Group'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 Parent Group's tax liability for the years involved. A determination thereof will be made by the applicable 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 Parent Group's tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax 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. In particular, we express no opinion as to Parent's basis in the Corporation 3 stock, as to whether the transactions represented to qualify as § 351 exchanges did so qualify, or as to whether the Date C transaction qualified as a reorganization under § 368(a)(1)(A).

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent and Former Company Official. However, the Director should verify all essential facts. In addition, notwithstanding that an extension of time is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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 a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: