

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B05-PLR-102197-01

Date:

January 26, 2001

LEGEND

Parent =

Buyer =

Sub =

Parent's Company
Officer =

Tax
Professional =

Date A =

Date B =

Date C =

Date D =

The following is a duplicate private letter ruling issued in response to your letter dated January 10, 2001. The original private letter ruling was issued from our office on November 30, 2000. You have stated that the original private letter ruling was mailed December 11, 2000, but that due to internal misrouting of the mail you did not locate the letter until January 4, 2001. You filed an amended return on January 8, 2001, to which you attached the original private letter ruling. You are concerned that the Service Center will reject your filing of the amended return on the basis that it was not filed within 30 days of November 30, 2000, and are therefore requesting additional time in which to file this duplicate copy.

In a letter dated April 21, 2000, a request was made for an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. Parent as the common parent of the consolidated group of which Sub was a member is requesting the extension to file a statement of allowed loss under § 1.1502-20(c)(3) of the Income Tax Regulations (sometimes hereinafter referred to as the "Statement" or the "Election") for the taxable year ending on Date B. Additional information was received in a letter dated October 19, 2000. The material information is summarized below.

Parent is the common parent of a consolidated group that has a calendar taxable year and that uses the accrual method of accounting. Sub was a wholly owned subsidiary of Parent and Sub was included in Parent's consolidated federal income tax return.

On Date A, Parent sold all of the stock of Sub to Buyer, an unrelated corporation. It is represented that (1) Parent deducted the loss on its return for its taxable year ending on Date B; (2) an election under § 338(h)(10) of the Internal Revenue Code was not made with respect to the sale; and (3) the amount Parent deducted was determined in accordance with § 1.1502-20(c). On Date C, Parent filed its return for its taxable year ending on Date B. Date C was the extended due date of such return. The Statement was not attached to the return or otherwise filed.

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.

Section 1.1502-20(c)(1), as a general rule, allows a deduction for a loss disallowed by § 1.1502-20(a)(1) to the extent that it exceeds an amount determined by a specified formula. Section 1.1502-20(c)(3) provides that the loss allowed under § 1.1502-20(c)(1) applies only if a statement of allowed loss is filed with the taxpayer's return for the year of disposition.

Parent, as the common parent of the consolidated group, was required by § 1.1502-20(c)(3) to make and attach the Statement to its return for the year of disposition in order to deduct the amount, if any, of the loss not disallowed. On Date C, Parent filed its return for its taxable year ending on Date B, the taxable year in which the sale occurred. However, for various reasons, the Statement was not filed. On or about Date D, Tax Professional discovered that the Statement had not been filed. Subsequently, this request under § 301.9100-1, for an extension of time to file the Statement was submitted to the Service. The statute of limitations under § 6501 has not run for Parent's taxable year that included the sale or any subsequent 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 Statement 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 Statement, provided 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.

Information, affidavits, and representations submitted by Parent's Company Officer and Tax Professional explain the circumstances that resulted in the failure to timely file the Statement. The information establishes that a tax professional was responsible for the Statement, that Parent relied on the tax professional to timely file the Statement, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent acted reasonably and in good faith in failing to timely file the Statement, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, subject to the below conditions, we grant an extension of time under § 301.9100-1, until 30 days from the date of issuance of this letter, for Parent to file the Statement with respect to the disposition of Sub on Date A, as described above.

The above extension of time is conditioned on: (i) the purported Date A sale constituting a valid disposition, within the meaning of §1.1502-20, of Sub's stock in the taxable year ending on Date B and (ii) the taxpayers' (Parent's, any other member of Parent's group, Buyer's and Sub'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 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 District 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. Section 301.9100-3(c).

Parent must amend its return for its taxable year ending on Date B, to attach to the return the Statement and information set forth in § 1.1502-20(c)(3). In addition, Parent should attach a copy of this letter to the amended return. Also, Parent must give a copy of the Statement and this letter to the Revenue Agent examining Parent's consolidated return for the taxable year ending on Date B.

We express no opinion as to (1) whether Parent's sale of Sub stock to Buyer on Date A was an arm's length transaction; (2) whether the sale price represented fair market value; (3) whether Parent recognized a loss on the sale; (4) if a loss was recognized on the sale, the amount of the loss; and (5) if a loss was recognized on the sale, the amount of the loss disallowed, 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 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, and their employees. 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.

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

Sincerely yours,

By Debra Carlisle

Branch Chief, Branch 5