

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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June 25, 1999

LEGEND

Parent =

Subsidiaries =

Company Official =

Authorized
Representatives =

Business A =

Date X =

Date A =

Date B =

Date C =

\$Y =

\$X =

Dear

This is in response to your Authorized Representatives' letter dated February 26, 1999 requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election and a statement. Parent (as the common parent of the consolidated group) is requesting the extension of time to file an election under § 1.1502-20(g)(5)[(4)] of the Income Tax Regulations and a statement of allowed loss under § 1.1502-20(c)(3) (sometimes hereinafter collectively referred to as the "Elections" or "Election"), for its taxable year ending on Date X. The former is with respect to the reattribution of certain losses of the Subsidiaries to Parent, and the latter is with respect to the portion of the alleged worthless stock losses (on Parent's stock of the Subsidiaries) that Parent may otherwise deduct under § 165(g) of the Internal Revenue Code. In connection with this request, Parent and the applicable District Director have extended to Date C, the period of limitations on assessments under § 6501(a) for Parent's (and the Subsidiaries') taxable year ending on Date X. Additional information was received in letters dated June 22 and 23, 1999. The material information is summarized below.

Parent is the common parent of a consolidated group that has a taxable year ending on March 31, and that uses the accrual method of accounting. Each of the Subsidiaries (which are identified above in the redacted legend) was wholly owned by Parent and included in Parent's consolidated federal income tax return. During the third quarter of its taxable year ending on Date X, Parent liquidated the Subsidiaries.

On Date A, Parent filed its consolidated federal income tax return for its taxable year ending on Date X. On the return Parent deducted \$Y as an ordinary loss under § 165(g)(3), which represents that portion of its basis in the stock of the Subsidiaries that it is otherwise permitted by § 1.1502-20(c) to deduct. Parent also states that it reattributed \$X of the Subsidiaries' losses to itself, pursuant to § 1.1502-20(g). Parent represents that it filed its returns for its taxable year ending on Date X (and for

succeeding taxable years) consistent with the Elections. However, for various reasons, Parent did not attach the Elections to the return or otherwise filed them. Moreover, the Service has not examined Parent's return for its taxable year ending on Date X.

Parent represents that its Subsidiaries' stock became worthless during its taxable year ending on Date X (that date is after February 1, 1991, the effective date of § 1.1502-20), and that it is entitled to a worthless stock deduction under § 165(g) for its Subsidiaries' stock. Parent also represents that part of the § 165(g) loss is disallowed under §§ 1.1502-20(a)(1) and 1.1502-20(c)(1), and that part is allowable as a deduction under 1.1502-20(c)(1). Further, Parent represents that notwithstanding that its Subsidiaries' stock became worthless for purposes of a § 165(g) deduction, that the Subsidiaries were not insolvent within the meaning of § 1.1502-20(g)(2). Finally, Parent represents that the amount of the loss disallowed and the amount of the loss allowable was determined in accordance with § 1.1502-20(c).

The Elections were due on Date A (*i.e.*, the date the return was due and filed for the year of the alleged "disposition"). However, for various reasons the Elections were not attached to the return or otherwise filed. On Date B (which is after the due date for the Elections), Company Official and Authorized Representatives discovered that the Elections had not been filed. Subsequently, this request was submitted to the Service, under § 301.9100-1, for an extension of time to file the Elections. The period of limitations on assessments under § 6501(a) has not expired for Parent's (and the Subsidiaries') taxable year(s) in which the liquidation and alleged loss, the taxable years in which the Elections should have been filed, or any taxable years that would have been affected by the Elections had they been timely filed.

Parent, as the common parent of the consolidated group, was required by §§ 1.1502-20(g)(5)[(4)] and 1.1502-20(c)(3) to make and attach the Elections to its return for the year of disposition¹, in order to reattribute any portion of Subsidiaries' losses to Parent, and in order to deduct the amount (if any) of the loss recognized on the disposition that is not disallowed under § 1.1502-20(c).

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 to 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(h) provides that, as a general rule, § 1.1502-20 applies with respect to dispositions on or after February 1, 1991.

¹Which, allegedly, is the taxable year that Parent's Sub stock became worthless, but not insolvent within the meaning of § 1.1502-20(g)(2), and in which Parent claimed a worthless stock deduction under § 165(g).

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 the sum 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 1.1502-20(g)(1) provides that, as a general rule, a common parent may reattribute to itself any portion of the net operating loss carryovers and net capital loss carryovers attributable to the subsidiary when a member disposes of stock of the subsidiary and the member's loss would be disallowed under § 1.1502-20(a)(1). The amount reattributed may not exceed the amount of loss that would be disallowed if no election is made under this paragraph (g). For this purpose, the amount of loss that would be disallowed is determined by applying paragraph (c)(1) of this section (without taking into account the requirement in paragraph (c)(3) of this section that a statement be filed) and by not taking reattribution into account. Section 1.1502-20(g)(2) limits reattribution of losses from insolvent members. Section 1.1502-20(g)(5)[(4)] provides that the election to reattribute losses under § 1.1502-20(g)(1) must be made in a separate statement, signed by the common parent and each subsidiary whose losses are being reattributed, and filed with the group's return for the taxable year of disposition.

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 of 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, provided the taxpayer demonstrates to the satisfaction of the Commissioner that:

- (1) The taxpayer acted reasonably and in good faith, and,
- (2) Granting relief will not prejudice the interests of the government.

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 Elections was fixed by the regulations (i.e., §§ 1.1502-20(g)(5)[(4)] and 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 Elections, 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 Official and Authorized Representatives explain the circumstances that resulted in the failure to file the Elections. The information establishes that Parent requested relief under § 301.9100 before the failure to make the Elections was discovered by the Internal Revenue Service, that Parent had filed its returns as if the Elections had been made and consistent therewith, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

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 Elections, the requirements of §§ 301.9100-1 and 301.9100-3 are 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 Elections (i.e., the election under § 1.1502-20(g)(5)[(4)] and the statement under § 1.1502-20(c)(3)).

The above extension of time is conditioned on: (1) Parent having a valid disposition of the stock of its Subsidiaries in its taxable year ending on Date X (i.e., that, in fact, Parent's stock of its Subsidiaries became worthless in its taxable year ending on Date X); (2) the Subsidiaries **not** being insolvent on the date of the alleged disposition, within the meaning of § 1.1502-20(g)(2); and (3) the taxpayers' (Parent's and Subsidiaries') tax liability being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections 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. 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).

We express no opinion as to: (1) whether the Subsidiaries' stock was worthless; (2) if the Subsidiaries' stock was worthless, when it became worthless; (3) if the Subsidiaries' stock was worthless, whether Parent is entitled to take a deduction under § 165(g); (4) if the Subsidiaries' 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 Parent was entitled to take the deduction (if at all); (5) if the Subsidiaries' stock was worthless and Parent was entitled to take a deduction under § 165(g), whether same constituted a disposition within the meaning of § 1.1502-20(a)(2); (6) if such constituted a disposition, whether Parent recognized a loss on such disposition; (7) if such constituted a disposition and Parent recognized a loss thereon, as to the amount of loss (if any), and as to the amount of the loss (if any) disallowed and/or allowed under § 1.1502-20(c)(1) (*i.e.*, computed without taking into account the requirement under § 1.1502-20(c)(3) or reattribution); (8) if Parent recognized a loss on the disposition and some or all of such loss is disallowed, as to the amount of Subsidiaries' losses that may be reattributed to Parent, if any; and (9) whether any of the Subsidiaries are insolvent, within the meaning of § 1.1502-20(g)(2), and/or as to the application of the § 1.1502-20(g)(2) insolvency limitation (if any).

Parent should file the Elections in accordance with §§ 1.1502-20(c)(3) and 1.1502-20(g)(5)[(4)]. That is, Parent must amend its returns for its taxable year ending on Date X, and its first taxable year ending after the due date for the Elections, to attach to such returns the § 1.1502-20(c)(3) statement and the § 1.1502-20(g)(5)[(4)] election. See §§ 1.1502-20(c)(3) and 1.1502-20(g)(5)(i) and (ii). Also, the § 1.1502-20(g)(5)[(4)] election must be signed by properly authorized officials of both Parent and each of the now liquidated Subsidiaries. See § 1.1502-20(g)(5)[4].

In addition, no opinion is expressed as to the tax effects or consequences of filing the Elections 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 Elections 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 the authorized representatives designated on your power of attorney.

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,
Assistant Chief Counsel (Corporate)

by _____
Richard Todd
Counsel to the Assistant
Chief Counsel (Corporate)