Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:1 PLR-102838-00
Date:
February 23, 2000

Legend:

Foreign #Z =

Foreign #X =

Foreign #Y =

Parent =

Sub #1 =

Sub #2 =

Subsidiaries =

Date A =
Date B =

Date C =
Date X =
Date #1 =
Parent's
Company Official =

Outside Tax Professional =

New Outside Tax Professional =

Authorized Representatives =

Business A =
$X =
$Y =
$Z =
$AA =
$BB =

$CC =
Condition #X =

X% =
Y% =

Dear :

This responds to your February 4, 2000 request that our ruling letter concerning the above taxpayers, which was addressed to you and dated September 30, 1999 (“Prior Letter Ruling”) be amended. Our Prior Letter Ruling granted a 30 day extension of time under § 301.9100-1 of the Procedure and Administration Regulations for Parent (as the common parent of the consolidated group) to file a statement of allowed loss under § 1.1502-20(c)(3) with respect to the deconsolidation of Sub #1 during the taxable year ending on Date X (sometimes hereinafter referred to as the "Election"). The Election is required in order to obtain the benefits of § 1.1502-20(c)(1). Information was also received in letters dated April 12, June 3, August 20, and September 29, 1999. Parent’s taxable years affected by the Election were under examination while we were determining whether to grant the extension and, pursuant Rev. Proc. 1999-2, 1999-1 I.R.B. 73 (which has been superseded by Rev. Proc. 2000-2, 2000-1 I.R.B. 73), we coordinated the request with the applicable District Director’s office before we issued our Prior Letter Ruling. The material information submitted for consideration is summarized below.

Certain information was received in connection with your February 4, 2000 request that explains why, notwithstanding that the taxpayers filed the Election pursuant to our Prior Letter Ruling, the taxpayers were not able to file the Election within the 30 day period required by our Prior Letter Ruling. Such information also establishes that the taxpayer acted reasonably and in good faith, and that granting further relief will not prejudice the interests of the government. Accordingly, our Prior Letter Ruling is hereby amended to read as follows:

Parent is the common parent of a consolidated group that has a calendar taxable year and uses the accrual method of accounting. Prior to Date A, Sub #1 was a wholly owned domestic subsidiary of Parent, and the Subsidiaries were wholly owned domestic subsidiaries of Sub #1. On Date A, Sub #2 was a foreign corporation that was X% owned by Foreign #X and Y% by Parent; Parent was a wholly owned subsidiary of Foreign #X; and Foreign #X was a subsidiary of Foreign #Y. It is represented that Parent and Sub #2 were under common control within the meaning of § 304(a)(1). Parent and its subsidiaries are engaged in Business A. On Date #1 (which is in a taxable year subsequent to the taxable year that Date X is in) Foreign #Z acquired Foreign #X from Foreign #Y. The applicable country of incorporation and residency of the foreign corporations are set forth above in the redacted legend.

On Date A, Parent sold all of the stock of Sub #1 to Sub #2 for $X (which is represented to be the then fair market value of the Sub #1 stock). It is further represented that Parent's basis in its Sub #1 stock was $Y, and that the excess of Parent’s basis in the Sub #1 stock over its fair market value was $Z. The transaction resulted in the deconsolidation of Sub #1 (and the Subsidiaries).

It is represented that: (i) the Date A transaction was subject to § 304, (ii) the Date A transaction resulted in the deconsolidation of Sub #1, (iii) § 1.1502-20(b)(1) applies to

the Date A transaction, and (iv) Parent is entitled to the benefits of § 1.1502-20(c)(1). It is also represented that an election under § 338 was not made with respect to the acquisition by Sub #2 of the stock of Sub #1 or the Subsidiaries. Moreover, Parent will determine the amount of basis reduction under § 1.1502-20(b)(1) in accordance with § 1.1502-20(c).

On its tax return for the taxable year ending on Date X, Parent attached information that: (i) described the "§ 304 sale of Sub #1 stock to Sub #2 for $X"; and (ii) identified that Parent's basis in the Sub #1 stock had been reduced from $Y to $AA (a reduction of $CC) pursuant to § 1.1502-20(c). This information was not in the form specified by § 1.1502-20(c)(3) and was not entitled "Allowed Loss under Section 1.1502-20(c)."

Parent's return for the taxable year ending on Date X (which includes the date on which the transfer and deconsolidation occurred) was filed on Date B, the extended due date therefor (which is after February 1, 1991, the effective date of § 1.1502-20). The Election was not attached to the return or otherwise filed. The period of limitations on assessments under § 6501(a) has not expired for Parent's and its subsidiaries' (specifically for Parent's, Sub #1's, Sub #2's and the Subsidiaries') taxable year(s) in which the deconsolidation occurred, the taxable years 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 in which the deconsolidation occurred, in order to limit the amount of basis reduction required under § 1.1502-20(b)(1) to the sum of the amounts specified in § 1.1502-20(c). The Election was due on Date B (i.e., the extended due date on which Parent's return was filed for the taxable year ending on Date X, the year in which the deconsolidation of Sub #1 occurred), as an attachment to the return. However, for various reasons the Election was not attached to the return or otherwise filed. On Date C, Parent's Company Official, New Outside Tax Professional, and Authorized Representatives discovered the Election had not been filed. Subsequently, this request, under § 301.9100-1, for an extension of time to file the Election was submitted to the Service. Subsequent to the issuance of our Prior Letter Ruling, Parent amended its return to attach thereto a copy of the Election and our Prior Letter Ruling. However, for various reasons Parent was not able to file the Election within the required 30 day period.

Section 1.1502-20(b)(1) provides that, as a general rule, if a member's basis in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. Section 1.1502-20(h) provides that § 1.1502-20 is applicable with respect to deconsolidations on or after February 1, 1991.

Section 1.1502-20(c)(1), as a general rule, provides that the amount of loss disallowed under § 1.1502-20(b)(1) with respect to a share of stock shall not exceed the sum determined by the formula specified in § 1.1502-20(c). Section 1.1502-20(c)(3) provides that § 1.1502-20(c)(1) (i.e., the limitation on the amount of basis reduction on deconsolidation) applies only if the separate statement required under this paragraph is filed with the taxpayer's return for the year of the deconsolidation. The statement must be entitled "Allowed Loss Under Section 1.1502-20(c)," and the required information that must be contained therein is specified in § 1.1502-20(c)(3).

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 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 Parent’s Company Official, Outside Tax Professional, New Outside Tax Professional and Authorized Representatives explain the circumstances that resulted in the failure to file the Election

and to prefect the Election in accordance with our Prior Letter Ruling. The information establishes that tax professionals were responsible for the Election and for amending the return to prefect the Election in accordance with our Prior Letter Ruling, that Parent relied on the tax professionals to timely make the Election and to prefect the Election in accordance with our Prior Letter Ruling, 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 Election and to prefect the Election in accordance with our Prior Letter Ruling, 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 60 days from the date of issuance of this amended letter ruling, for Parent (as the common parent of the consolidated group) to prefect the Election with respect to the deconsolidation of Sub #1 (and its Subsidiaries) on Date A, as described above, by amending its return to attached thereto a copy of this amended letter ruling (and to attach a copy of the Election, the required information set forth in § 1.1502-20(c)(3) and a copy of our Prior Letter Ruling, if Parent, subsequent to the issuance of our Prior Letter Ruling has not already so amended its return).

The above extension of time is conditioned on: (i) Condition #X (which is set forth in the above redacted legend in order not to disclose identifying information), and (ii) the taxpayers' (Parent's, Sub #1's, Sub #2's, the Subsidiaries', and any and all of their subsidiaries') 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 should file the Election in accordance with § 1.1502-20(c)(3). That is, Parent, as the common parent of the consolidated group, should amended its return to attach a copy of this amended letter ruling (and to attach a copy of the Election, the required information set forth in § 1.1502-20(c)(3) and a copy of our Prior Letter Ruling, if Parent, subsequent to the issuance of our Prior Letter Ruling has not already so amended its return).

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.

A copy of this letter is being sent to Parent's Company Official, 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) 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)