

Internal Revenue Service

Number: **200543027**

Release Date: 10/28/2005

Index Number: 337.16-01, 9100.29-00

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:B03

PLR-118464-05

Date:

July 18, 2005

Parent =

Subsidiary =

Country A =

Date A =

Date B =

Tax Professional =

Company Official =

Dear :

This letter responds to a letter dated March 30, 2005, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time

to file a statement under § 1.337(d)-2T(c) of the Income Tax Regulations (the "Election") with respect to Parent's basis adjustment in its Subsidiary stock in connection with Subsidiary's deconsolidation from the Parent consolidated group on Date A (the "Deconsolidation"). Additional information was received in a letter dated July 5, 2005. The material information is summarized below.

Parent is the common parent of a consolidated group. Subsidiary was a member of Parent's consolidated group until Date A, on which date Subsidiary was reincorporated as a Country A corporation.

Section 1.337(d)-2T(b) generally provides 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) defines 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) is set forth in § 1.337(d)-2T(c)(2). Section 1.337(d)-2T(c)(2) does not require a basis reduction to the extent that 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. A taxpayer who qualifies for the exception under § 1.337(d)-2T(c) must attach a statement to its tax return entitled "§ 1.337(d)-2T(c) statement." Section 1.337(d)-2T(c)(1). Section 1.337(d)-2T(c)(3) requires that the taxpayer file the § 1.337(d)-2T(c) statement with its tax return for the year in which the deconsolidation takes place and sets forth other filing requirements.

An election under § 1.337(d)-2T(c) to prevent a basis reduction upon the deconsolidation of Subsidiary was required to be filed with or as part of Parent's consolidated group's income tax return for the year of the deconsolidation, the year that includes Date A. However, for various reasons, the Election was not filed. The statute of limitations on assessment under § 6501(a) has not expired for Parent's consolidated group's taxable year for which it wants to make the Election or for any taxable years that would be 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, Tax Professional, and 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 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 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 § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election with respect to the Deconsolidation, as described above. A copy of this letter must be attached to the Election.

The above extension of time is conditioned on Parent's consolidated 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 filed (taking into account the time value of money). No opinion is expressed as to the taxpayer'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 taxpayer'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. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 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.

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

Sincerely,

Ken Cohen

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