

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:
CC:CORP:1-PLR-126218-00
Date:
May 9, 2001

LEGEND

Parent =

Purchaser =

Disregarded Entity =

Target =

Target Affiliate 1 =

Target Affiliate 2 =

Newco =

Sellers =

Country X =

Date A =

Date B =

Date C =

Parent's Officer =

Authorized
Representatives =

This letter responds to your letter dated November 14, 2000, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in letters dated February 20, March 30, and May 4, 2001. Parent is

requesting the extension to file an election under § 338(g) of the Internal Revenue Code and § 1.338-1(d) of the Income Tax Regulations, with respect to the acquisition of the stock of Target and the deemed acquisition of the stock of Target Affiliate 1 and Target Affiliate 2 (sometimes hereinafter referred to as the "Election"). The information submitted for consideration is summarized below. All citations in this letter to regulations under § 338 are to regulations in effect for Date A.

Parent is the common parent of a consolidated group that includes Purchaser. Parent operates on a calendar year and uses the accrual method of accounting. Purchaser is a wholly owned domestic subsidiary of Parent. Disregarded Entity is a Country X entity that the taxpayer represents is treated as a branch or division of Purchaser for U.S. tax purposes.

Prior to the acquisition described below, Target, a Country X corporation, was wholly owned by foreign individuals and a foreign trust ("Sellers"). Target Affiliate 1 was a wholly owned subsidiary of Target. Target Affiliate 2 was a wholly owned subsidiary of Target Affiliate 1. Target Affiliate 1 and Target Affiliate 2 (together, "Target Affiliates") were also Country X corporations.

Prior to the transaction described below, neither Sellers, Target, nor Target Affiliates filed United States income tax returns nor were they subject to United States income taxation. Neither Target nor either of Target Affiliates was: (1) a controlled foreign corporation within the meaning of § 957(a); (2) a passive foreign investment company for which an election under § 1295 was in effect; (3) a foreign investment company or a foreign corporation the stock ownership for which is described in § 552(a)(2); or (4) required, under § 1.6012-2(g), to file a United States income tax return.

On Date A, Purchaser acquired all the stock of Target from Sellers. It is represented that the acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3). Immediately after the closing, Target, Target Affiliates, and Disregarded Entity amalgamated and continued as Newco, a Country X company.

The Election was due on Date B. For various reasons, however, the Election was not filed. On Date C (which is after the due date for the Election), Authorized Representatives discovered that the Election had not been filed. The period of limitations on assessments under § 6501(a) has not expired for Parent's taxable year(s) in which the acquisition occurred, the taxable years in which the Election should have been filed, or any taxable year(s) that would have been affected by the Election had they been timely filed.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a "§ 338 election" or a "§ 338(h)(10) election" and (2) the acquisition is a "qualified stock purchase."

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. 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).

Information, affidavits, and representations submitted by Parent's Officer and Authorized Representatives explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the taxpayers reasonably relied on a qualified tax professional, 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 has established that it acted reasonably and in good faith in failing to timely file the Election, 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 to file the Election with respect to the acquisition of the stock of Target and the deemed acquisition of the stock of Target Affiliates, as described above.

The above extension of time is conditioned on (1) the filing within 120 days of the issuance of this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election; and (2) the taxpayers' (Parent's consolidated group's, Target's, Target Affiliates' and Sellers') 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 taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the federal income tax returns involved. Further, we express no opinion as to the federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

Parent should file the Election in accordance with § 1.338-1(d). That is, a new election on Form 8023 must be executed on or after the date of this letter, which grants an extension, and filed in accordance with the instructions on the election form. A copy of this letter should be attached to the election form. Parent, Target, and Target Affiliates must file or amend (if and as applicable) its applicable returns to report the acquisition as a "§ 338 transaction," and to attach a copy of the Form 8023 and a copy of this letter.

We express no opinion as to: (1) whether the acquisition of the Target stock and the deemed acquisition of Target Affiliates stock qualify as "qualified stock purchases," (2) whether the acquisition of the Target stock and the deemed acquisition of the Target Affiliates stock qualify for § 338(a) treatment, or (3) any other tax consequences arising from the Election.

In addition, we express no opinion 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. All essential facts are subject to verification, however. 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.

Pursuant to the powers of attorney on file in this office, copies of this letter are being sent to Parent and another representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: Ken Cohen
Senior Technician Reviewer, Branch 3