

Instructions for Form 8023

(Rev. February 2006)



Department of the Treasury
Internal Revenue Service

Elections Under Section 338 for Corporations Making Qualified Stock Purchases

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Form

Use Form 8023 to make elections under section 338 for a corporation (the “target” corporation) if the purchasing corporation has made a qualified stock purchase (QSP) of the target corporation.

If a section 338(g) election is made for the target, the target is treated for purposes of Subtitle A of the Code as having sold all of its assets on the acquisition date and then as having purchased the assets as a new corporation (“new” target) on the day after the acquisition date. (For periods on or before the acquisition date, the target is sometimes referred to as the “old” target.) In addition, the target must recognize gain or loss on the deemed sale of its assets.

If a section 338(h)(10) election is made for the target, the target generally is treated as making the deemed sale and liquidating. The treatment of the target shareholders generally is consistent with the sale and liquidation treatment. A section 338(h)(10) election cannot be made for a target corporation unless it is acquired from a selling consolidated group, a selling affiliate (as defined in Regulations section 1.338(h)(10)-1(b)(3)), or an S corporation shareholder (or shareholders).

Who Must File

Generally, a purchasing corporation must file Form 8023 for the target. If a section 338(h)(10) election is made for a target, Form 8023 must be filed jointly by the purchasing corporation and the common parent of the selling consolidated group (or the selling affiliate or an S corporation shareholder(s)). If the target is an S corporation, a section 338(h)(10) election must be made by all of the shareholders of the target, including shareholders who do not sell target stock in the QSP.

When and Where To File

File Form 8023 by the 15th day of the 9th month after the acquisition date to make a section 338 election for the

target corporation. In the case of a Foreign Purchasing Corporation, see *Special Instructions for Foreign Purchasing Corporations* on page 2. File Form 8023 with the Internal Revenue Service, Submission Processing Center, P.O. Box 9941, Mail Stop 4912, Ogden, UT 84409.

Elections for Multiple Targets

One Form 8023 (rather than multiple forms) may be used for targets that meet these three requirements:

1. Each has the same acquisition date,
2. Each was a member of the same affiliated group (defined below) immediately before the acquisition date, and
3. Each is a member of the same affiliated group immediately after the acquisition date.

All of the information that would be required for the additional targets if a separate Form 8023 were filed must be provided for that target in schedules attached to the form. If a form is used to make an election under section 338 for more than one target, check the box on line 9. In an attached schedule, provide the information requested in Sections A-1, A-2, B, C, and D for each target corporation other than the one shown in Section B of the form. In the schedule, also state which elections are made for each target (i.e., information corresponding to lines 6, 7, 8, and 9 of Section E). Include the appropriate signature or signature attachment for each target. See *Signature(s)* on page 2.

One special instruction applies to section 338 elections for lower-tiered targets, whether one or more Forms 8023 are filed to make the elections. If, for example, P purchases target A, target A owns target B, and P makes a section 338 election for target A, this results in a deemed QSP of target B. To make an election for target B, complete and sign Form 8023 as if the purchasing corporation(s) of the directly purchased target were the purchasing corporation(s) of the lower-tiered target.

Definitions

A **qualified stock purchase** (QSP) is the purchase of at least 80% of the total voting power and value of the stock of a corporation by another corporation during a 12-month acquisition period. Preferred stock (as described in section 1504(a)(4)) is not included in computing voting power or value. See section 338(h)(3) for the definition of “purchase.”

The **acquisition date** is the first day on which a QSP has occurred.

In general, the **12-month acquisition period** is the 12-month period beginning with the first acquisition by purchase of stock included in the QSP. See section 338(h)(1) for additional rules. Also see Regulations section 1.338-8(j)(2).

The term **affiliated group** means an affiliated group as defined in section 1504(a), determined without regard to the exceptions contained in section 1504(b).

Specific Instructions

Employer identification number.

An employer identification number (EIN) must be included for each corporation identified in Section A-1, A-2, B, or C or on attached schedules. An EIN is not required if the corporation does not have, and is not otherwise required to have, an EIN.

Country of incorporation. When identifying the country of incorporation, include political subdivisions, if any.

Tax year ending. The tax year ending date of any corporation is determined without regard to any QSP.

Section A-1—Purchasing Corporation

If more than one member of an affiliated group purchases stock of the target corporation listed in Section B (or identified on an attached schedule), enter in Section A-1 the name of the corporation that acquired the largest percentage (by value) of the target’s stock in the QSP. If two

or more affiliates acquired equal amounts of target stock, insert the name of any one of them in Section A-1. On an attached schedule, provide the information requested on this form for each purchasing corporation other than the one listed in Section A-1. Also provide a schedule that lists which target stock was acquired by each purchasing corporation.

Section A-2—Common Parent of the Purchasing Corporation

If the purchasing corporation is a member of a consolidated group, complete Section A-2.

Section C—Common Parent of Selling Consolidated Group, Selling Affiliate, S Corporation Shareholder, or U.S. Shareholder

If Form 8023 is filed to make a section 338(h)(10) election for a target that is an S corporation, the information requested in Section C must be provided for each shareholder of the S corporation target. Attach a schedule with respect to the other shareholders. If Form 8023 is filed to make a section 338 election for a target that is or was a controlled foreign corporation (CFC), enter in Section C the name of the U.S. shareholder that owned the largest percentage (by value) of the target's stock immediately before the acquisition date. If two or more U.S. shareholders acquired equal amounts of target stock, enter the name of any one of them in Section C. On an attached schedule, provide the information requested on this form for each U.S. shareholder other than the one listed in Section C. If a U.S. shareholder is a member of a consolidated group other than the common parent, also provide the name and EIN for the common parent of the U.S. shareholder's group.

Line 4b. Identifying number. Enter the social security number (SSN) for an individual. Enter the EIN for a corporation.

Section E—Elections Under Section 338

Line 8. Gain recognition election. If a gain recognition election is made for a target, it applies to the purchasing corporation and all members of its affiliated group that hold nonrecently purchased target stock (that is, stock in the target

acquired prior to the 12-month acquisition period). See Regulations section 1.338-5(d). If a section 338(h)(10) election is made for a target, a gain recognition election is deemed made by each purchasing group member.

If a gain recognition election is actually made (not deemed made) for a target corporation, attach a schedule providing the target corporation's name and the name, address, and EIN of each purchasing group member holding nonrecently purchased stock. The schedule must also contain the following declaration (or a substantially similar declaration): "EACH CORPORATION HOLDING STOCK SUBJECT TO THIS GAIN RECOGNITION ELECTION AGREES TO REPORT ANY GAIN UNDER THE GAIN RECOGNITION ELECTION IN ITS FEDERAL INCOME TAX RETURN (INCLUDING AN AMENDED RETURN, IF NECESSARY) FOR THE TAX YEAR IN WHICH THE ACQUISITION DATE OF THE TARGET OCCURS."

The schedule must be signed on behalf of each purchasing group member holding nonrecently purchased target stock by a person who states under penalties of perjury that he or she is authorized to act on behalf of the corporation.

A gain recognition election for the target also applies to any target affiliate that has the same acquisition date as the target and for which a section 338 election is made. Attach a schedule with the information requested above for each such target affiliate.

Signature(s)

If the common parent of a consolidated group is the agent of the purchasing corporation under Regulations section 1.1502-77, the person authorized to sign the statement of section 338 election is the person authorized to act on behalf of that common parent.

If a QSP of a target corporation is made by two or more corporations that are members of the same affiliated (but not consolidated) group, Form 8023 must be signed by a person authorized to sign on behalf of each corporation.

If a section 338(h)(10) election is made for an S corporation, Form 8023 must be signed by each S corporation shareholder regardless of whether the shareholder sells his interest in target stock in the QSP.

If multiple signatures are required, the signatures must be provided on a "SIGNATURE ATTACHMENT" to the form under the appropriate "declaration under penalties of perjury" (this is the statement that appears on Form 8023 immediately above the relevant signature line). Write "See attached" in the signature area of the Form 8023.

Special Instructions for Foreign Purchasing Corporations

Unless otherwise specifically noted, the general rules and requirements in these instructions apply to foreign purchasing corporations.

Who must file. Generally, the purchasing corporation must file Form 8023. However, the U.S. shareholders of controlled foreign purchasing corporations described in Regulations section 1.338-2(e)(3) may make the section 338 election for the purchasing corporation. The shareholders may make this election only if the purchasing corporation is not required under Regulations section 1.6012-2(g) to file a U.S. income tax return for the tax year that includes the acquisition date.

To make this election, complete Form 8023 and attach a statement to the form showing the name, address, identifying number, country in which organized, and stock interest of each U.S. shareholder. The statement must be signed by each U.S. shareholder. When signing the statement, each U.S. shareholder must state under penalties of perjury that the stock interest for that shareholder specified in the statement is correct. Write "See attached" in the signature area of Form 8023.

As an alternative to a jointly signed statement, the shareholder signatures may be shown on separate statements attached to Form 8023. If a U.S. shareholder is not an individual or does not have delegated authority to sign the statement, the person signing must state under penalties of perjury that he or she is authorized to sign the statement for the U.S. shareholder. File Form 8023 for the foreign purchasing corporation's tax year that includes the acquisition date.

Form 8883. Each U.S. shareholder must also file Form 8883, Asset Allocation Statement Under Section 338, with Form 5471, Information

Return of U.S. Persons With Respect to Certain Foreign Corporations. See the Instructions for Form 8883.

When to file. Special rules may apply to foreign purchasing corporations. The time during which a qualifying foreign purchasing corporation may make a section 338 election for a qualifying foreign target is described in Regulations section 1.338-2(e)(1).

Special Instructions for Foreign Targets

Unless otherwise specifically noted, the general rules and requirements in these instructions apply to foreign targets.

A section 338 election will not be valid for a target that is a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company unless affected U.S. persons who own stock in these targets are notified, in writing, as set forth in Regulations section 1.338-2(e)(4).

Form 8883. Each U.S. shareholder must also file Form 8883 with Form 5471. See the Instructions for Form 8883.

Attachments. Attach a schedule listing the date of each purchase of foreign target stock, each purchaser's name, the percentage purchased by each purchaser, and the name and place of incorporation of any selling entities. If affected U.S. persons owning stock in the target are notified, attach a schedule containing the name and EIN or SSN of each U.S. person.

Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become

material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this tax form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	9 hr., 19 min.
Learning about the law or the form	1 hr., 35 min.
Preparing and sending the form to the IRS	1 hr., 48 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave., NW, IR-6406, Washington, DC 20224. Do not send this form to this address. Instead, see *When and Where To File* on page 1.
