

Foreign Target 2 =

Foreign Target 3 =

Domestic Target =

Company Official =

Tax Professional =

Date A =

Date B =

Date C =

x =

y =

Dear :

This letter responds to a letter dated March 2, 2007, submitted on behalf of Parent, the common parent of the consolidated group of which Corp X, the United States shareholder of Purchaser, the foreign purchasing corporation, is a member, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file a "§ 338 election" under § 338(g) with respect to Purchaser's acquisition of the stock of Foreign Target (sometimes hereinafter referred to as the "Election") on Date B. Additional information was received in letter dated April 26, 2007. The material information is summarized below.

Parent is the common parent of an affiliated group of corporations who join in filing a consolidated Federal income tax return. Parent owns all the stock of Sub, a domestic corporation. Sub owns all the stock of Corp X, a domestic corporation, Corp X owns all the stock of Corp Y, a foreign corporation disregarded as an entity separate from its owner for Federal income tax purposes, and Corp Y, wholly owns Purchaser, a foreign corporation.

Immediately prior to the stock purchases described below, Foreign Target owned $x\%$ of Foreign Target 1, and Foreign Target 1 wholly owned Foreign Target 2, Foreign Target 3, and Domestic Target.

On Date A, Purchaser entered into a purchase agreement for Purchaser to acquire all of the stock of Foreign Target. On Date B, Purchaser acquired all of the stock of Foreign Target in exchange for cash. Also on Date A, Purchaser entered into a purchase agreement to acquire the $y\%$ of Foreign Target 1 stock not owned by Foreign Target. On Date B, Purchaser acquired the $y\%$. As a result, on Date B, Purchaser directly and indirectly acquired all of the outstanding stock of Foreign Target 1, and indirectly acquired all of the outstanding stock of Foreign Target 2, Foreign Target 3, and Domestic Target. Parent represents that the acquisition of Foreign Target was a "qualified stock purchase," as defined in § 338(d)(3).

Taxpayers have represented that Foreign Target was not a controlled foreign corporation or a foreign personal holding company at any time during the portion of its taxable year that ends on the acquisition date (as defined in § 338(h)(2)). However, taxpayers are unable to represent that neither Foreign Target, Foreign Target 1, Foreign Target 2, Foreign Target 3, nor Domestic Target was not a passive foreign investment company. Finally, taxpayers have represented that Purchaser is a controlled foreign corporation as defined in § 957 (taking into account § 953(c)) and was not required under § 1.6012-2(g) (other than § 1.6012-2(g)(2)(i)(b)(2)) to file a United States income tax return for its taxable year that includes the acquisition date.

Purchaser and Foreign Target filed § 338(g) elections for Foreign Target 1, Foreign Target 2, Foreign Target 3, and Domestic Target by Date C, the due date for the Election. However, for various reasons a valid Election with respect to the purchase of Foreign Target was not filed. After the due date of the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for any person for which the Election may affect such person's United States tax.

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. 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., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent 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, Company Official, and Tax Professional 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, the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See §§ 301.9100- 3(b)(1)(i) and (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 acquisition of the stock of Foreign Target, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must file the Election on Form 8023, in accordance with § 1.338-2(d) and (e)(3) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a § 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to any returns to which they are relevant. Alternatively,

any taxpayer filing its return electronically may satisfy the requirement of attaching a copy of this letter ruling to the return by attaching a statement to the return that provides the date and control number of this letter ruling.

The above extension of time is conditioned on all relevant taxpayers' tax liability (if any) not being 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 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 taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether the acquisition of the stock of Foreign Target and the deemed acquisitions of the stock of Foreign Target 1, Foreign Target 2, Foreign Target 3, and Domestic Target qualify as "qualified stock purchases" under § 338(d)(3); (2) whether the § 338(g) elections filed for Foreign Target 1, Foreign Target 2, Foreign Target 3, and Domestic Target are valid; or (3) any other tax consequences arising from the Election.

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 taxpayers. 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 ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

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