

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B06-PLR-107166-01
Date:
April 30, 2001

Parent =

Purchaser =

Target =

Sellers =

Country X =

Date A =

Date B =

Date C =

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Date D =

Outside CPA =

Authorized

Representative =

Parent Official =

This responds to Authorized Representative's letter dated November 21, 2000 submitted on your behalf, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file an election under § 338(g) of the Internal Revenue Code and under § 1.338-1(d) of the Income Tax Regulations, with respect to Purchaser's acquisition of 80% of the outstanding stock of Target from Sellers (the "Election"). All citations in this letter to regulations under § 338 are to the regulations as in effect for Date B. The material information submitted for consideration is summarized below.

Parent was (and is) the common parent of a consolidated group of which Purchaser is a member. Parent has a taxable year ending December 31. Target is a corporation formed under the laws of Country X. Sellers are foreign corporations.

Prior to its acquisition, neither Target nor any of Sellers filed U.S. income tax returns nor were they subject to U.S. income taxation. Further, Target was not (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 of which is described in § 552(a) or (4) required under § 1.6012-2(g) to file a United States income tax return.

On Date A, Purchaser purchased 20% of the outstanding shares of Target. On Date B (which is more than one year after Date A), Purchaser purchased the remaining 80% of the outstanding shares of Target from Sellers. Prior to Date B, Parent determined that it would file an election pursuant to the provisions of § 338(g) to treat Purchaser's acquisition of 80% of the stock of Target as the purchase of the assets of Target.

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It has been represented that (1) the Target stock acquired on Date B was acquired for cash in a fully taxable transaction; and (2) the acquisition of the stock of Target was a "qualified stock purchase" within the meaning of § 338(d)(3).

The Election was due for Target on Date C. However, for various reasons, the Election was not filed. By Date D (which is after Date C), Outside CPA discovered that the Election was not timely filed. Subsequently, this request was submitted under § 301.9100-1(a) for an extension of time to file the Election. The statute of limitations under § 6501 has not run for the tax year in which the acquisition occurred, the taxable year in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if the purchasing corporation makes or is treated as having made a "§ 338 election" and 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).

In this case, the time for filing the Election is fixed by the regulations under § 1.338-1(d). 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 that 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, Parent Official, and Authorized Representative explain the circumstances that resulted in the failure to timely file the valid Election. The information establishes that the request for relief was initiated before the failure to make the regulatory election was discovered by the Internal Revenue Service, that a competent tax professional was responsible for the Election, and that the interests of 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

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conclude that 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. Accordingly, an extension of time is granted 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 Date B acquisition of Target stock, as described above.

The above extension of time is conditioned on the (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 and Target's) 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 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 § 1.338-1(d). That is, an 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 (together with any information that is required to be attached to the election form). Parent and Target should file or amend, as applicable, their returns to report the acquisition as a § 338 transaction and to attach thereto a copy of Form 8023 and a copy of this letter.

No opinion is expressed as to: (1) whether the acquisition of the stock of Target qualifies as a "qualified stock purchase"; (2) whether the acquisition of the stock of Target qualifies for § 338(a) treatment; or (3) any other tax consequences arising from the Election.

In addition, 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 tax effects of or consequences 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 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.

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.

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A copy of this letter is being sent to the Authorized Representative, pursuant to the power of attorney on file in this office.

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