

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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CC:CORP:01

PLR-124018-06

Date:

August 11, 2006

### LEGEND:

Parent =

Purchaser =

Target =

Target Sub =

Seller =

Date A =

Date B =

Date C =

Date D =

Company Official =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated May 4, 2006, 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 to file a "§ 338 election" under § 338(g) of the Internal Revenue Code ("the Code") with respect to Purchaser's acquisition in one transaction of the stock of Target and the deemed acquisition of the stock of Target Sub (sometimes hereinafter referred to as the "Election"), on Date B. (Citations in this letter to regulations under § 338 are to regulations in effect on Date B.) Additional information was received in letters dated July 11, 2006, July 27, 2006 and August 9, 2006. The material information is summarized below.

Parent is a corporation that was the common parent of an affiliated group of corporations that filed a consolidated Federal income tax return for the tax year ending on Date C. Purchaser is a subsidiary of Parent. Target was a wholly owned subsidiary of Seller and its sole asset was all of the outstanding Target Sub stock. Target and Target Sub were foreign corporations.

On Date A, Purchaser and Seller entered into a purchase agreement for Purchaser to acquire all of the stock of Target from Seller. On Date B, Purchaser acquired all of the stock of Target from Seller solely for cash in a taxable exchange, pursuant to the purchase agreement. It is represented that Purchaser's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3).

It is represented that prior to the acquisition of Target, Target and Target Sub were not controlled foreign corporations, passive foreign investment companies nor foreign personal holding companies at any time during the portion of their taxable years that end on the acquisition date (as defined in § 338(h)(2)).

Parent intended to file the Election. All tax returns have been filed consistent with a valid Election having been filed. The Election was due on Date D, but for various reasons a valid Election was not filed. After the due date for 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.

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"; 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 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) describes the Commissioner's authority to grant an extension of time to make a regulatory election. 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., § 1.338-1(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 Purchaser, Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

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 Target and the deemed acquisition of the stock of Target Sub, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must file the Election on Form 8023. A copy of this letter must be attached to Form 8023. Also, a copy of this letter and a copy of Form 8023 (or Form 8883, if appropriate) must be attached to all relevant tax returns. Alternatively, instead of attaching a copy of this letter to the returns, taxpayers filing their returns electronically may attach a statement to the return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on all relevant parties' 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 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 tax liability is lower. Section 301.9100-3(c).

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 and their representatives. 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(s) 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,

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

cc: