

**Internal Revenue Service**

Number: **200703026**

Release Date: 1/19/2007

Index Number: 338.01-02, 9100.06-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-138012-06

Date:

October 18, 2006

Purchaser =

Seller =

LLC =

Foreign Target 1 =

Foreign Target 2 =

Foreign Target 3 =

Foreign Target 4 =

Foreign Target 5 =

State X =

State Y =

Date A =

Date B =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated July 21, 2006, submitted on behalf of Purchaser, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting an extension to file a “§ 338 election” under § 338(g) (sometimes hereinafter referred to as the “Election”) with respect to Purchaser’s acquisition of the stock of Foreign Target 1, Foreign Target 2, Foreign Target 3, Foreign Target 4, and Foreign Target 5, collectively referred to as the “Foreign Targets,” on Date A. Additional information was received in a letter dated October 2, 2006. The material information is summarized below.

Purchaser is a State X corporation that made a subchapter S election upon formation. Seller, a State Y corporation, owns all the interests in LLC, a State Y limited liability company that has elected to be disregarded as an entity separate from its owner for Federal income tax purposes. LLC owns all the stock of the Foreign Targets, except for one share of Foreign Target 5, which is owned directly by Seller. The Foreign Targets are controlled foreign corporations.

On Date A, pursuant to a purchase agreement of the same date, Purchaser acquired all the interests in LLC including all of the stock of the Foreign Targets and the one share of Foreign Target 5 stock from Seller in exchange for cash. It is represented that Purchaser’s acquisition of the stock of the Foreign Targets qualified as a “qualified stock purchase,” as defined in § 338(d)(3).

It is represented that prior to the acquisitions of the Foreign Targets, the Foreign Targets were controlled foreign corporations within the meaning of § 957(a). None of the Foreign Targets was a passive foreign investment company 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)).

Purchaser intended to file the Election. The Election was due on Date B, but for various reasons a valid election was not made. After the due date for the Election, Purchaser realized that a valid election had not been filed. Accordingly, 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 Purchaser's or Foreign Targets' taxable years in which the acquisition occurred, the taxable years in which the Election should have been filed, or 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: (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 for 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 interest 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 Purchaser to file the Election, provided Purchaser 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 surrounding the failure to file the 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 Purchaser has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 through 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 45 days from the date on this letter, for Purchaser to file the Election with respect to the acquisition of the stock of Foreign Targets, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Purchaser must file the Election on Form 8023, in accordance with § 1.338-2(d) 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 tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Purchaser's, and the Foreign Target's) 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 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 Foreign Targets' stock qualifies as a "qualified stock purchase" under § 338(d)(3); or (2) 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 as the time or, 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. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still 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.

In accordance with the Power of Attorney on file with 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: