

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.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-145235-06

Date:

December 13, 2006

LEGEND

Parent =

Purchaser 2 =

Purchaser 3 =

Purchaser 4 =

Purchaser 5 =

Purchaser 6 =

Seller =

Sub 1 =

Sub 2 =

PLR-145235-06

2

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

LLC X =

LLC Y =

Target 1A =

Target 1A Affiliates =

Target 1B =

Target 1B Affiliates =

Target 1C =

Target 1C Affiliates =

Target 2 =

Target 3 =

Target 4 =

Target 5 =

Target 6A =

Target 6B =

Date A =

Date B =

Date C =

Date D =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated May 16, 2006, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent, on its own behalf and as United States shareholder of Purchaser 2, Purchaser 3, Purchaser 4, Purchaser 5, and Purchaser 6 (the “foreign purchasing corporations”) is

requesting an extension to file a “§ 338 election” under § 338(g) (sometimes hereinafter referred to as the Election) with respect to Parent’s and the foreign purchasing corporations’ acquisitions of the stock of Target 1A Affiliates, Target 1B Affiliates, Target 1C Affiliates, Target 2, Target 3, Target 4, Target 5, Target 6A, and Target 6B, all foreign corporations (sometimes hereinafter referred to as the Targets), on Date C. The material information is summarized below.

Seller, a foreign corporation, owned all of the stock of Sub 1, a domestic corporation, and all of the interests of Sub 2, an entity disregarded as separate from its owner for Federal income tax purposes. Sub 1 owned all of the interests in Target 1A, an entity disregarded as separate from its owner, and owned all the interests in Sub 3, an entity disregarded as separate from its owner. Sub 1 also owned a interest in Target 1B, a domestic general partnership (with Sub 3 owning the remaining interest), and a interest in Target 4, a foreign corporation (Sub 2 owns the remaining interest in Target 4). Target 1A owned all of the stock of Target 3 and all of the stock of Target 1A Affiliates, two foreign corporations. Target 1B owned all of the stock of Target 2 and all of the stock of Target 1B Affiliates.

Sub 2 owned all of the interests in Target 1C, an entity disregarded as separate from its owner for Federal income tax purposes and all of the stock of Sub 4, a domestic corporation, and a interest in Target 4 (with Sub 1 owning the remaining). Target 1C owned all of the stock of Target 5 and all of the stock of Target 1C Affiliates. Sub 4 owned all of the stock of Target 6A and Target 6B.

On Date A, Seller and LLC X entered into a purchase agreement for LLC X to purchase the stock of certain domestic and foreign subsidiaries of Seller. After entering into the agreement, LLC X formed LLC Y, an entity disregarded as separate from its owner for Federal tax purposes. LLC Y subsequently formed Parent, a domestic corporation.

On Date B, LLC X assigned its rights and obligations under the purchase agreement to Parent. Parent then incorporated Purchaser 2, Purchaser 3, Purchaser 4, Sub 5 (a foreign corporation), and Purchaser 6. Sub 5 then formed Purchaser 5. Finally, Parent contributed its shares of Purchaser 3 to Sub 6, a newly incorporated foreign corporation. Parent and the members of its affiliated group file a consolidated Federal income tax return.

On Date C, Purchaser 2 acquired all of the stock of Target 2 from Target 1B in exchange for cash; Purchaser 3 acquired all of the stock of Target 3 from Target 1A in exchange for cash; Purchaser 4 acquired all of the stock of Target 4 from Sub 1 and Sub 2 in exchange for cash; Purchaser 5 acquired all of the stock of Target 5 from Target 1C in exchange for cash; Purchaser 6 acquired all of the stock of Target 6A and 6B from Sub 4 in exchange for stock. Target 1A, Target 1B and Target 1C distributed the proceeds from the sales to their respective owners. Parent then acquired all of the equity interests in Target 1A, Target 1B, and Target 1C for cash (which included Target

1A Affiliates, Target 1B Affiliates, and Target 1C Affiliates, respectively). It is represented that Parent's and the foreign purchasing corporations' acquisition of the stock of Targets qualified as a "qualified stock purchase," as defined in § 338(d)(3).

Target 1A Affiliates, Target 1B Affiliates, Target 1C Affiliates, Target 2, Target 3, Target 4, Target 5, Target 6A, and Target 6B were controlled foreign corporations during their taxable year that ends on the acquisition date, but they were not passive foreign investment companies or foreign personal holding companies during their taxable year that ends on the acquisition date.

The foreign purchasing corporations are controlled foreign corporation as defined in § 957 (taking into account § 953(c)) and are 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.

Parent intended to file the Election. 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. The period of limitations on assessment under § 6501(a) has not expired for Parent's or Target 1A Affiliates, Target 1B Affiliates, Target 1C Affiliates, Target 2, Target 3, Target 4, Target 5, Target 6A or Target 6B 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 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 Target 1A Affiliates, Target 1B Affiliates, Target 1C Affiliates, Target 2, Target 3, Target 4, Target 5, Target 6A, and Target 6B 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 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 the taxpayers' (Parent's consolidated group's, and Target 1A Affiliates', Target 1B Affiliates', Target 1C Affiliates', Target 2's Target 3's, Target 4's, Target 5's, Target 6A's and Target 6B'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 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 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 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,

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