

Internal Revenue Service

Number: **200751009**

Release Date: 12/21/2007

Index Numbers: 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-124385-07

Date:

September 19, 2007

Parent =

Purchaser =

Target =

Target Sub =

Seller =

Tax Professional =

Company Official =

State X =

Date A =

Date B =

Date C =

Date D =

Dear

This letter responds to a letter dated May 14, 2007, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in a letter dated August 30, 2007. Parent is requesting an extension to deliver a notice of § 338 election to certain United States shareholders under § 1.338-2(e)(4) pursuant to a § 338 election with respect to Purchaser's acquisition in one transaction of the stock of Target and the deemed acquisition of the stock of Target Sub on Date B. The delivery of the notice of § 338 election may hereinafter be referred to as the "filing of Notice" or the "Election". 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 and a member of the affiliated group. Target was a wholly owned subsidiary of Seller.

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. 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 controlled foreign corporations within the meaning of § 957.

Parent intended to file a § 338 election. Form 8023 was filed on Date D. All tax returns have been filed consistent with a valid § 338 election having been filed. The filing of Notice was required to be done on or before Date D, but for various reasons was not done. After Date D, it was discovered that the filing of Notice had not been timely accomplished. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time for filing of Notice.

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."

Section 1.338-2(e)(4)(i) provides that if a target subject to a § 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to (A) each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and (B) each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

Section 1.338-2(e)(4)(iv) provides that the notice required by § 1.338-2(e)(4)(i) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed.

Section 1.338-2(e)(4)(v) provides that a statement of § 338 election is not valid if timely notice is not given to one or more U.S. persons described in § 1.338-2(e)(4).

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. § 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.338-2(e)(4)(iv)). 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

and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(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 Notice 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 deliver the Notice (and a copy of Form 8023, its attachments, and instructions), pursuant to § 1.338-2(e)(4).

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant tax returns must be amended by attaching a copy of this letter to such 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 Parent's authorized representative.

Sincerely,

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