

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201246021**

Release Date: 11/16/2012

Index Number: 9100.06-00, 338.01-02

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-123177-12

Date:

August 13, 2012

Legend

Purchaser =

Seller =

DE 1 =

DE 2 =

DE 3 =

DE 4 =

Target 1 =

Target 2 =

Target 3 =

Target 4 =

Country A =

Country B =

Country C =

Country D =

Date A =

Date B =

Company Official =

Dear :

This letter responds to a letter dated May 31, 2012, submitted on behalf of Purchaser, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting an extension to

file a “section 338 election” under section 338(g) with respect to Purchaser’s acquisitions of the stock of Target 1, Target 2, Target 3 and Target 4 (sometimes hereinafter referred to as the “Election”), on Date A. Additional information was received in letters dated June 28, 2012 and August 7, 2012. The material information is summarized below.

Purchaser, an S Corporation, owns all of the stock of DE 1, which owns all the stock of DE 2, which, together with DE 1, owns all the stock of DE 3. DE 1, DE 2, and DE 3 are disregarded as entities separate from their owners for Federal tax purposes. Seller is a foreign partnership. Seller owns all the stock of DE 4. DE 4 is disregarded as an entity separate from Seller for Federal tax purposes. DE 4 owns all the stock of each of Target 1, Target 2, Target 3 and Target 4. Target 1, Target 2, Target 3 and Target 4 are each a controlled foreign corporation. Target 1 is a Country A corporation. Target 2 is a Country B corporation. Target 3 is a Country C corporation. Target 4 is a Country D corporation.

On Date A, DE 3 purchased all of the stock of DE 4 from Seller, in exchange for cash and a promissory note. It is represented that (through DE 3’s acquisition of the stock of DE 4) Purchaser acquired the stock of each of Target 1, Target 2, Target 3 and Target 4 in a “qualified stock purchase,” as defined in section 338(d)(3). Purchaser has also represented that no required filer is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requested relief (taking into account any qualified amended return filed within the meaning of section 1.6664-2(c)(3)).

The section 338 election was due on Date B, 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 section 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under section 6501(a) has not expired for Purchaser’s or Target’s 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 “section 338 election” or a “section 338(h)(10) election”; and (2) the acquisition is a “qualified stock purchase.”

Under section 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 section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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., section 1.338-2(d)). Therefore, the Commissioner has discretionary authority under section 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 sections 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 and Company Official 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. See section 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 sections 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 section 301.9100-3, until 45 days from the date on this letter, for Purchaser to file the Election with respect to the acquisition of the stock of each of Target 1, Target 2, Target 3 and Target 4.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Purchaser must file the Election on Form 8023, in accordance with section 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 section 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable years). 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.

Purchaser must also deliver written notice of the election (and a copy of Forms 8023 and 8883, their attachments and instructions) to U.S. persons selling or holding stock in Target 1, Target 2, Target 3 and Target 4. See section 1.338-2(e)(4).

The above extension of time is conditioned on the Purchaser's tax liability 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 taxpayer's 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 any of the acquisitions of the Target 1 stock, the Target 2 stock, the Target 3 stock and the Target 4 stock qualifies as a "qualified stock purchase" under section 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 rulings. For purposes of granting relief under section 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 section 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 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  
Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: