

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:1
PLR-133257-12
Date:
January 30, 2013

Legend

Partnership =

Parent =

Subsidiary =

Purchaser =

Target 1 =

Target 2 =

Target 3 =

Country A =

Country B =

Date 1 =

Date 2 =

Year 1 =

Company Official =

Tax Professionals =

Dear :

This letter responds to your letter dated July 30, 2012, submitted on behalf of Purchaser, requesting an extension of time under § 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 § 338(g) of the Internal Revenue Code (the "Code") with respect to Purchaser's acquisition of the stock of Target 1 and deemed acquisitions of the stock of Target 2 and Target 3 (collectively, the "Elections") on Date 1. The material information submitted in the letter and in subsequent communications is summarized below.

Purchaser acquired all the stock of Target 1 on Date 1 (the "Purchase"). On Date 1 and continuing through the date of this letter, (a) Partnership owned all of the outstanding stock in Parent, Parent owned all of the outstanding stock in Subsidiary,

and Subsidiary owned all of the outstanding stock in Purchaser; (b) Target 1 owned all of the outstanding stock in Target 2 and Target 3 (the three entities, collectively, the “Targets”); (c) Partnership was a domestic entity treated as a partnership for U.S. federal income tax purposes; (d) Parent was a domestic entity treated as a branch or division of Partnership for U.S. federal income tax purposes; (e) Subsidiary, Purchaser, Target 1 and Target 2 were Country A entities each treated as a corporation for U.S. federal income tax purposes; and (f) Target 3 was a Country B entity treated as a corporation for U.S. federal income tax purposes.

Purchaser has represented that its acquisition of the stock of Target 1 qualified as a “qualified stock purchase” within the meaning of section 338(d)(3), and that provided that a section 338(g) election is made as to Target 1, the deemed acquisitions of Target 2 and Target 3 each will qualify as a “qualified stock purchase” within the meaning of section 338(d)(3).

Purchaser has also represented that none of the Targets was a controlled foreign corporation, a passive foreign investment corporation, or a foreign personal holding company at any time during the portion of its taxable year that ended on the acquisition date (as defined in section 338(h)(2)).

The Elections were due on Date 2, but for various reasons valid section 338(g) elections were not filed. After the due date for the Elections, it was discovered that the Elections had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Elections. Purchaser has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time Purchaser requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

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 § 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). 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 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 Elections is fixed by 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 Elections, provided Purchaser shows that 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 interest 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 valid Elections. The information establishes that Purchaser reasonably relied on a qualified tax professional who failed to make, or to advise Purchaser to make, the Elections, and that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

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 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 of this letter, for Purchaser to file a section 338(g) election with respect to the acquisition of the stock of Target 1 and, provided that a section 338(g) election is effected as to Target 1, section 338(g) elections with respect to the deemed acquisitions of Target 2 and Target 3.

Within 45 days of the date on this letter, Purchaser must file the Elections 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 (including Partnership and its direct and indirect partners) must file or amend, as applicable, all returns and amended returns (if any) necessary to report the acquisition of Target 1 and the deemed acquisitions of Target 2 and Target 3 consistent with the Elections having been made, for the taxable year in which the acquisitions were consummated (and for all other affected taxable years). A copy of this letter and a copy of Form 8023 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 (PLR-133257-11) of the letter ruling.

The above extension of time is conditioned on Partnership's (and its direct and

indirect partners), Purchaser's, Target 1's, Target 2's, and Target 3's tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections 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 U.S. federal income tax returns involved.

We express no opinion as to: (1) whether the acquisition of the Target 1 stock or, provided that a section 338(g) election is effected as to Target 1, the potential deemed acquisitions of the stock of Target 2 and Target 3, qualify as qualified stock purchases under section 338(d)(3); or (2) any other tax consequence arising from the Elections.

In addition, we express no opinion as to the tax consequences of filing the Elections 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 Elections late that are not specifically set forth in the above rulings. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the Purchaser, Company Official, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Elections, 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
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)