

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:

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PLR-104418-13

Date:

May 22, 2013

Legend

Parent =

FSub =

Seller =

Target 1 =

Target 2 =

Date A =

Date B =

Date C =

Company Officials =

Dear _____ :

This letter responds to a letter dated January 23, 2013, submitted on behalf of Parent, a U.S. corporation, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file elections. Parent is requesting an extension to file “§ 338 elections” under § 338(g) with respect to the acquisitions of Target 1, a foreign corporation, and Target 2, a foreign corporation (sometimes hereinafter referred to as the “Elections”), on Date B.

Parent is the common parent of a consolidated group. Parent also is a United States shareholder (as defined in § 951(b)) of FSub. Seller, a U.S. corporation, owned, directly or indirectly, all of the stock of Target 1 and Target 2. On Date A, Parent and Seller entered into a purchase agreement pursuant to which: (1) Parent would acquire all of the stock of Target 1 from Seller; and (2) FSub would acquire all of the stock of Target 2 from Seller. On Date B, Parent acquired all of the stock of Target 1 in exchange for cash, and FSub acquired all of the stock of Target 2 in exchange for cash. It is represented that Parent’s acquisition of the stock of Target 1 and FSub’s acquisition of the stock of Target 2 qualified as “qualified stock purchases,” as defined in § 338(d)(3).

Target 1 and Target 2 were controlled foreign corporations as defined in § 957(a) at the time of the acquisitions. FSub is a controlled foreign corporation as defined in § 957 (taking into account § 953(c)) and is 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 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 § 6662 at the time Parent requested relief.

Parent intended to file the Elections. The Elections were due on Date C, but for various reasons valid 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. The period of limitations on assessment under § 6501(a) has not expired for Parent’s consolidated group, FSub, Target 1, or Target 2 for the taxable years in which the acquisition occurred, the taxable years in which the Elections should have been filed, or any taxable years that would have been affected by the Elections if they had 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”; 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 to the satisfaction of the Commissioner that the taxpayer 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 and Company Officials explain the circumstances that resulted in the failure to timely file the valid Elections. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent 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 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 Elections with respect to the acquisitions of Target 1 and Target 2, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must file the Elections 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 transactions as § 338 transactions for the taxable year in which the transactions were 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 requirements 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.

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

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group, FSub, Target 1, and Target 2) 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 Federal income tax returns involved.

We express no opinion as to: (1) whether the acquisition of the Target 1 and Target 2 stock qualified as "qualified stock purchases" under § 338(d)(3); or (2) any other tax consequences 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 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 Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen

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

cc: