

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-146412-14

Date:

April 20, 2015

Old Purchasing Corporation =

Acquirer =

Selling Corporation =

Target =

Minority Shareholders =

Z =

Company Official =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated December 18, 2014, submitted on behalf of Old Purchasing Corporation (by its substitute agent, Target) and Selling Corporation ("Taxpayers"), requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayers are requesting an extension to file a "§ 338(h)(10) election" under §§ 338(g) and 338(h)(10) of the Internal Revenue Code and § 1.338(h)(10)-1(c) of the Income Tax Regulations concerning Old Purchasing Corporation's acquisition of the stock of Target (sometimes hereinafter referred to as the "Election") on Date 1. Additional information was submitted in a letter dated April 15, 2015. The material information is summarized below.

Old Purchasing Corporation, a State X corporation, was the common parent of an affiliated group that filed a consolidated Federal income tax return. Target, a State Y corporation, was a member of Selling Corporation's consolidated group before Date 1. Selling Corporation owned z percent of Target stock and Minority Shareholders owned the remainder.

Old Purchasing Corporation acquired all of the stock of Target on Date 1 in a fully taxable transaction pursuant to a stock purchase and exchange agreement. Taxpayers have represented that Old Purchasing Corporation's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3). Taxpayers have also represented that all relevant returns have been filed consistent with making the Election.

On Date 3, Old Purchasing Corporation merged downstream into Target with Target surviving. Taxpayers have represented that Target became the substitute agent for Old Purchasing Corporation when Old Purchasing Corporation went out of existence in the merger.

Taxpayers intended to file the Election. The Election was due on Date 2, but for various reasons a valid Election was not filed. After the due date for the Election, it was

discovered that a valid election was not filed. Taxpayers then sought an automatic extension of time to file the Election pursuant to Section 5 of Rev. Proc. 2003-33, 2003-1 C.B. 803. However, Taxpayers may not have obtained such an automatic extension. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. Taxpayers have represented that they are not seeking to alter a return position for which an accuracy-related penalty resulting from or related to the Election has been or could be imposed under § 6662 at the time of this request for relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)).

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.”

Section 338(h)(10) permits the purchasing and selling corporations to elect jointly to treat the target corporation as deemed to sell all of its assets and distribute the proceeds in complete liquidation. A § 338(h)(10) election may be made for target only if purchaser acquires stock meeting the requirements of § 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase. Section 1.338(h)(10)-1(c)(1).

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, 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(h)(10)-1(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayers to file the Election, provided Taxpayers show they 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 Target, Selling Corporation, and Company Official explain the circumstances that resulted in the failure

to timely file a valid Election. The information establishes that Taxpayers reasonably relied on a qualified tax professional who failed to make, or advise Taxpayers to make, the Election, and that the request for relief was filed before the failure to make the Election 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 Taxpayers have shown they 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 Taxpayers' to file the Election concerning the acquisition of the stock of Target, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Taxpayers must file the Election on Form 8023 in accordance with § 1.338(h)(10)-1(c) 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(h)(10) 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 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-146412-14) of the letter ruling.

The above extension of time is conditioned on Taxpayers' and the members of their respective consolidated groups, 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 liabilities 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/sale" of the Target stock qualifies as a "qualified stock purchase" under § 338(d)(3); (2) whether the "acquisition/sale" of Target stock qualifies for § 338(h)(10) treatment; or (3) 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.

Target must provide Selling Corporation with a copy of this letter.

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, 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: