

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202240004**
Release Date: 10/7/2022

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 338.00-00, 338.01-00,
338.01-02, 9100.00-00,
9100.06-00

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-104312-22

Date:
July 13, 2022

Legend

Purchaser =

Target =

Date 1 =

Company Officials =

Dear :

This letter responds to a letter dated January 20, 2022, 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 section 338(g) of the Internal Revenue Code (the "Code") with respect to Purchaser's acquisition of the stock of Target on Date 1. The material information submitted is summarized below.

Prior to Date 1, each of Purchaser and Target was a foreign corporation or a foreign entity treated as a corporation for United States federal income tax purposes. On Date 1, Purchaser acquired all the stock of Target. Purchaser has represented that its acquisition of all the stock of Target on Date 1 qualified as a "qualified stock purchase" as defined in section 338(d)(3). Target was a controlled foreign corporation as defined in section 957(a) at the time of the acquisition.

Purchaser intended to file the Election, 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 §301.9100-3, for an extension of time to file the Election. 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.

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"; 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. See §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.

Information, affidavits, and representations submitted by Purchaser and Company Officials explain the circumstances that resulted in the failure to timely file the 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 §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 §§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 75 days from the date on this letter, for Purchaser to file the Election with respect to Purchaser's acquisition of the stock of Target.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Purchaser must file the Election 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 150 DAYS OF THE DATE ON THIS LETTER, all relevant parties must amend any relevant return to attach a copy of this letter and a copy of Form 8883.

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 on, and control number (PLR-104312-22) 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 any United States persons selling or holding stock in Target in accordance with §1.338-2(e)(4).

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). We express no opinion as to any 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 stock of Target 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 ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Purchaser and Company Officials. 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 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

Thomas I. Russell

Thomas I. Russell

Chief, Branch 1

Office of Associate Chief Counsel (Corporate)

cc: