

**Internal Revenue Service**

Number: **200402006**

Release Date: 01/09/2004

Index Numbers: 338.01-02, 9100.06-00

Department of the Treasury  
Washington, DC 20224

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CC:CORP:B03 – PLR-133392-03

Date:

October 01, 2003

LEGEND

Parent1 =

Parent2 =

Acquirer =

Target =

Country A =

Target Subs =

Exchange =

Date A =

Date B =

Date C =

Date D =

Company Officials =

Tax Professionals =

Dear :

This letter responds to a letter dated May 28, 2003, submitted on behalf of Parent1 and Parent2, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent1, as the common parent of the consolidated group that includes one of two United States shareholders of the foreign purchasing corporation, Acquirer, and Parent2, as the other United States shareholder of Acquirer, are requesting an extension to file a "§ 338 election" under § 338(g) with respect to Acquirer's acquisition of the stock of Target and the deemed acquisitions of the stock of Target Subs (sometimes hereinafter referred to as the "Election"), on Date B. (Citations in this letter to regulations under § 338 are to regulations in effect on Date B.) Additional information was received in a letter dated June 13, 2003. The material information is summarized below.

Parent1 and Parent2 are the common parents of affiliated groups that file consolidated tax returns. Target was a Country A company whose stock was traded on the Exchange at the time of acquisition. Target owned the stock of Target Subs.

On Date A, Acquirer made a tender offer to acquire all of the Target stock. On Date B, Acquirer acquired all of the stock of Target in exchange for cash. It is represented that the acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3).

Target was not a controlled foreign corporation or a foreign personal holding company at any time during the portion of its taxable year that ends on the acquisition date (as defined in § 338(h)(2)). Target and/or one or more of Target Subs may have been passive foreign investment companies at one time during the portion of its taxable year that ends on the acquisition date.

Parent1 and Parent2 intended to file the Election. The Election was due on Date C, and that due date was extended to Date D, 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. The period of limitations on assessment under § 6501(a) has not expired for Parent1's or Parent2's consolidated groups', Target's, nor Target Subs' 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

"§ 338 election" or a "§ 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 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 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.*, § 1.338-2T(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent1 and Parent2 to file the Election, provided Parent1 and Parent2 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 Parent1 and Parent2, Company Officials, and Tax Professionals, 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 and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent1 and Parent2 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 Parent1 and Parent2 to file the Election with respect to the acquisition of the stock of Target and the deemed acquisitions of the stock of Target Subs, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent1 and Parent2 must file the Election on Form 8023, executed on or after the date on this letter, in

accordance with § 1.338-2T(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 § 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). In lieu of filing an amended return within 120 days of the date on this letter, Parent1 may follow the adequate disclosure procedures as provided in Rev. Proc. 94-69, 1994-2 C.B. 804. A copy of this letter and a copy of Form 8023 (or Form 8883, if appropriate) must be attached to any filed or amended returns or to the adequate disclosure statement.

The above extension of time is conditioned on the taxpayers' (Parent1's and Parent2's consolidated groups', Target's, and Target Subs') 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 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. 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 the acquisition of the Target stock qualifies as a "qualified stock purchase" under § 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 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.

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.

Parent1 must provide Parent2 with a copy of this letter.

Sincerely,

*Ken Cohen*

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