

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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CC:CORP:B06-PLR-111568-01

Date:

June 19, 2001

LEGEND:

Purchaser = .

Purchaser's Parent =

Purchaser's New
Direct Parent =

Purchaser's New
Ultimate Parent =

Seller's Parent =

Seller =

Target =

Company Official X =

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Company Official Y =Date A =Date B =Date C =Date D =

This is in response to a letter dated February 20, 2001, submitted by your authorized representative, requesting an extension of time to make a joint election pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Additional information was submitted in letters dated May 10, 2001, May 11, 2001, May 17, 2001, and June 12, 2001. Purchaser's Parent and Seller's Parent request an extension to file a "§ 338(h)(10) election" pursuant to § 338(h)(10) of the Internal Revenue Code ("Code") and § 1.338(h)(10)-1(d) of the Income Tax Regulations (the "Election"), regarding Purchaser's acquisition of Target on Date A. All citations in this letter to regulations under § 338 are to the regulations as in effect for Date A. The material information submitted for review is summarized below.

Purchaser's Parent was the common parent of a consolidated group including Purchaser, a wholly owned subsidiary. Seller's Parent is the common parent of a consolidated group including Seller, a subsidiary of Seller's Parent. Target was formerly a wholly owned subsidiary of Seller and member of the Seller's Parent's consolidated group. On Date B, Purchaser and Seller entered into a stock purchase agreement for Purchaser to acquire all of the Target stock from Seller. On Date A, Purchaser acquired all of the stock of Target from Seller in exchange for cash. On Date D, Purchaser's Parent was acquired by Purchaser's New Direct Parent, a subsidiary of Purchaser's New Ultimate Parent and member of the Purchaser's New Ultimate Parent's consolidated group. Purchaser's Parent has been a member of the Purchaser's New Ultimate Parent consolidated group since Date D.

It is represented that Purchaser's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3).

Purchaser's Parent and Seller's Parent intended to file the Election. The Election was due on Date C, 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 § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not

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expired for Purchaser's, Purchaser's Parent's, Target's, Seller's or Seller's Parent's taxable years in which the acquisition occurred, the taxable years in which the Election should have been filed, or any taxable years of the Purchaser, Purchaser's Parent, Purchaser's New Ultimate Parent, Target, Seller or Seller's Parent 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."

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 it is a member of a selling consolidated group, a member of a selling affiliated group filing separate returns, or an S corporation. Section 1.338(h)(10)-1(a).

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(h)(10)-1(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Purchaser's Parent and Seller's Parent to file the Election, provided Purchaser's Parent and Seller's Parent 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 Seller's Parent, Company Official X, and Company Official Y explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the taxpayers reasonably relied on a qualified tax professional, the request for relief was initiated before the failure to make the Election was discovered by the Internal Revenue Service, and that the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

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Based on the facts and information submitted, including the representations made, we conclude that Purchaser's Parent and Seller's Parent 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 § 301.9100-1, until 30 days from the date of issuance of this letter, for Purchaser's Parent and Seller's Parent to file the Election with respect to the acquisition of the stock of Target, as described above.

The above extension of time is conditioned on (1) the filing, within 120 days of the issuance of this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election, and (2) the taxpayers' (Purchaser's New Ultimate Parent's consolidated group's, Purchaser's Parent's consolidated group's, Target's and Seller's Parent's consolidated group's) 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).

Purchaser's Parent and Seller's Parent must file the Election in accordance with § 1.338(h)(10)-1(d). That is, a new election on Form 8023 must be executed on or after the date of this letter, which grants an extension, and filed in accordance with the instructions to the form. A copy of this letter must be attached to the election form. Purchaser's Parent and Seller's Parent must file or amend, as applicable, their returns 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), and to attach to the returns a copy of this letter and a copy of the Election.

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 § 301.9100-1, 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 § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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A copy of this letter must be provided to Seller's Parent.

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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,
Associate Chief Counsel (Corporate)
By: Ken Cohen
Senior Technician Reviewer, Branch 3