

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:2  
PLR-102718-14

Date:  
May 23, 2014

Legend

Purchaser =

Target =

Sellers =

Date A =

State A =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated January 10, 2014, submitted on behalf of Purchaser and Sellers, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser and Sellers 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

with respect to Purchaser's acquisition of the stock of Target (sometimes hereinafter referred to as the "Election") on Date A. Additional information was received in subsequent letters. The material information is summarized below.

Purchaser is a State A corporation and the common parent of its consolidated group. Target was a corporation that, prior to its acquisition by Purchaser, was treated as an S corporation within the meaning of § 1361. All the stock of Target was owned either directly or through a revocable trust meeting the requirements of § 1361(c)(2)(a)(i) by Sellers (individuals).

On Date A, Purchaser acquired all of the stock of Target in a fully taxable transaction pursuant to a stock purchase and exchange agreement. The taxpayers have represented that Purchaser's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3). The taxpayers have also represented that all relevant returns have been filed consistent with making the Election. Additionally, the taxpayers have represented that they do not seek to alter a return position for which an accuracy-related tax penalty has been or could be imposed under § 6662 at the time the parties requested relief and the new position requires or permits a regulatory election for which relief is requested.

After the due date for the Election, it was discovered that a valid election had not been properly filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

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 1.338(h)(10)-1(c)(1) permits the purchasing corporation and sellers of an S corporation 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.

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 Purchaser and Sellers to file the Election, provided Purchaser and Sellers 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 Purchaser, Sellers, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Purchaser reasonably relied on a qualified tax professional who failed to make, or advise Purchaser 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 Purchaser and Sellers 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 Purchaser and Sellers to file the Election with respect to the acquisition of the stock of Target, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Purchaser and Sellers 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, Purchaser and Sellers, having filed their returns as though a valid Election was made, must amend their returns to attach to the returns a copy of this letter. 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 of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Purchaser's consolidated group, Sellers', and Target'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.

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 Purchaser, Sellers, Company Official, and Tax Professional. 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.

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  
Acting Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)