

Internal Revenue Service

Number: **201850019**

Release Date: 12/14/2018

Index Number: 338.01-02, 9100.06-00

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:2

PLR-122788-18

Date:

September 17, 2018

Legend

Parent =

Purchaser =

Purchaser DRE =

Target =

Sellers

Date A =
Date B =
State A =
Country A =
Company Official =
Tax Professional =

Dear :

This letter responds to a letter dated July 16, 2018, submitted on behalf of Parent, as common parent of the consolidated group of which Purchaser is a member, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file a “§ 338(g) election” under § 338(g) with respect to Purchaser’s acquisition of the stock of Target through Purchaser DRE (hereinafter referred to as the “Election”) on Date A. The material information is summarized below.

Parent is a domestic corporation and the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return (the “Parent Consolidated Group”). Parent wholly owns Purchaser, a domestic corporation and a member of the Parent Group. Purchaser wholly owns Purchaser DRE, a foreign company treated as a disregarded entity for federal income tax purposes. Prior to Date A, Target, a controlled foreign corporation, was owned entirely by Sellers.

On Date A, Purchaser, through Purchaser DRE, acquired all of the stock of Target from Sellers in exchange for cash and a note issued by Purchaser DRE. On the same date, Target and Purchaser DRE amalgamated under Country A law with Purchaser DRE continuing as the amalgamated entity.

Parent has represented that Purchaser’s acquisition of the stock of Target through Purchaser DRE qualified as a “qualified stock purchase,” as defined in § 338(d)(3). Parent has also represented that it is not seeking to alter a return position

for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief and for which the new return position requires or permits a regulatory election for which relief is requested. Further, Parent has represented that the returns for all relevant taxable years have been filed consistent with having made a valid Election.

Parent intended to file the Election. The Election was due on Date B, 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.

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 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., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent 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 Parent, Company Official, and Tax Professional 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. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent 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 45 days from the date on this letter, for Parent 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, Parent 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 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties, having originally filed or amended their returns for all relevant taxable years to be consistent with a valid Election having been made, must amend their returns for the taxable year in which the transaction was consummated (and for any other affected taxable year) 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 and control number of the letter ruling.

Parent must also deliver written notice of the election (and a copy of Forms 8023 and 8883, their attachments, and instructions) to U.S. persons selling or holding stock in Target. See § 1.338-2(e)(4).

The above extension of time is conditioned on the taxpayers' (*i.e.*, the Parent Consolidated Group's 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 filed (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 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.

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