

Corporate Qualified Stock Purchase Elections (Under Temporary Regulations Section 1.338)

▶ See instructions on back.

Part I Identification of Corporate Entities

Section A.—Purchasing Corporation

| | | |
|--|---|----------------------------|
| 1a Name and Address of Purchasing Corporation | 1b Employer Identification Number | |
| | 1c Tax Year Ending | 1d Acquisition Date |
| | 1e Service Center Where Corporate Tax Return Was Filed | |

Section B.—Original Target Corporation

| | | |
|---|---|--|
| 2a Name and Address of Original Target Corporation | 2b Employer Identification Number | |
| | 2c Tax Year Ending | 2d Book Value of Assets on Acquisition Date |
| | 2e Service Center Where Corporate Tax Return Was Filed | |

Section C.—Common Parent of the Selling Group

(Complete this section only if a joint election under section 338(h)(10) is being made.)

| | | |
|--|--|--|
| 3a Name and Address of Common Parent of the Selling Group | 3b Employer Identification Number | |
| | 3c Tax Year Ending | |
| | 3d Date and Service Center Where Corporate Tax Return Was Filed | |

Part II Affected Tax Returns

| | Yes | No |
|--|--------------------------|--------------------------|
| 1 Was the original target corporation required to be included in a consolidated tax return of the selling group for the period that includes the acquisition date? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Is the original target corporation currently required or eligible to be included in a consolidated tax return of the selling group for the period that includes the acquisition date? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 If the answer to 1 or 2 is "Yes," state the principal place of business of the common parent of the selling group ▶ and, if different, the location of the common parent's principal office or agency ▶ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 Was the purchasing corporation a subsidiary included in a consolidated tax return for the period immediately prior to the acquisition date? If "Yes," state the name, address, and employer identification number of the purchasing corporation's parent corporation, and the IRS Service Center where the consolidated return was filed ▶ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 Is either the purchasing corporation or the original target corporation a foreign corporation? If "Yes," state the country (and political subdivision, if relevant) of both the purchasing and original target corporations ▶ | <input type="checkbox"/> | <input type="checkbox"/> |

Part III Elections.—Check the appropriate box(es) identifying the type of election(s) being made:

- 1 Express election and subelections:**
 - a** (i) Express election by purchasing corporation under Temporary Regulations section 1.338-4T(b)(8) ▶
 - (ii) Check this box to certify that this election is not barred by reason of section 338(f)(2) ▶
 - b** Gain recognition election under Temporary Regulations section 1.338-4T(j)(2) (Answer 5) ▶
 - c** Joint election under section 338(h)(10) ▶
 - d** Regular exclusion election under Temporary Regulations section 1.338-5T(c)(2)(v) ▶
- 2 Protective carryover election and subelection:**
 - a** Protective carryover election under Temporary Regulations section 1.338-4T(f)(6) ▶
 - b** Offset prohibition election under Temporary Regulations section 1.338-4T(f)(6)(ii) (Answer 1(iii)(B)) ▶

The corporation named above hereby elects section 338 treatment for the acquisition of the target corporation(s) listed above. Under penalties of perjury, the undersigned states and declares that he or she is authorized to make the election.

| | | |
|---|------|-------|
| Signature of Authorized Person for the Purchasing Corporation | Date | Title |
|---|------|-------|

Under penalties of perjury, the undersigned states and declares that he or she is authorized to make the section 338(h)(10) election in Part III of this form on behalf of the common parent of the selling group.

| | | |
|---|------|-------|
| Signature of Authorized Person for the Common Parent of the Selling Group | Date | Title |
| (Applicable only if a section 338(h)(10) election is being made) | | |

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this tax form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 8 hr., 22 min.

Learning about the law or the form 1 hr., 12 min.

Preparing and sending the form to the IRS 1 hr., 23 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making the form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0702), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see **Where To File** below.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Under section 338, a corporation making a qualified stock purchase can elect to treat the corporation whose stock is being purchased (target corporation) as having sold all of its assets on the acquisition date at fair market value. The target corporation is then treated as a new corporation that had purchased the assets on the day after the acquisition date. If the election is made, the target corporation must also recognize gain or loss on the deemed sale of its assets.

The purchasing corporation (and the selling group, if a joint election is made under section 338(h)(10)) files Form 8023 to make this election or other elections (including subelections) under section 338 and the related regulations.

When To File

Generally, Form 8023 must be filed by the 15th day of the 9th month after the month in which the acquisition date occurs. See the regulations for the filing date for certain foreign purchasing corporations and for certain classes of target corporations (including foreign targets).

Where To File

File Form 8023 with the District Director (Attention: Chief of Examination) for the Internal Revenue district where the principal place of business or the principal office or agency of the purchasing corporation is located. If the qualified stock purchase is made by two or more corporations that are members of the same affiliated group, Form 8023 must be filed with the District Director of the Internal Revenue district for each purchasing corporation. Foreign purchasing corporations that do not file U.S. income tax returns must file Form 8023 with the Office of the Assistant Commissioner (International), Attention: Chief of Examination, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Definitions

Acquisition Date.—The acquisition date is the first day on which a qualified stock purchase has occurred.

Qualified Stock Purchase.—A qualified stock purchase is the purchase of at least 80% of the total voting power and value of the stock of a corporation by another corporation during a 12-month acquisition period. Preferred stock (as described in section 1504(a)(4)) is not included when determining voting power or value. See section 338(h)(1) for the definition of "12-month acquisition period."

Specific Instructions

Part I—Identification of Corporate Entities

Section A—Purchasing Corporation

Complete all the information requested in this section for the corporation that makes the qualified stock purchase (or the members of the same affiliated group that make the qualified stock purchase). Attach a separate schedule if necessary. An employer identification number (EIN) is not required if the purchasing corporation does not have, and is not otherwise required to have, an EIN.

Line 1c.—Enter the month in which the tax year of the purchasing corporation ends.

Line 1e.—Enter the IRS Service Center where the return was filed for the period preceding the acquisition date.

Section B—Original Target Corporation

Note: *If a foreign target corporation is involved in an express election, the purchasing corporation must send written notice of the election to U.S. shareholders that hold stock in the foreign target. See Temporary Regulations section 1.338-1T(k)(7).*

Line 2c.—Enter the month in which the tax year of the original target corporation ends or ended, without regard to the qualified stock purchase.

Line 2d.—Enter the book value of the assets of the original target corporation as of the acquisition date. Do not reduce the value by the amount of any liabilities assumed.

Line 2e.—Enter the IRS Service Center where the return was filed for the period preceding the acquisition date.

Section C—Common Parent of the Selling Group

Line 3c.—Enter the month in which the tax year of the common parent of the selling group ends.

Line 3d.—Enter the date and the IRS Service Center where the selling group filed its consolidated return for the tax period which includes the acquisition date or for the last tax period for which a tax return was filed.

A separate Form 8023 need not be filed for corporations subject to this election by reason of section 338(f)(1) (affected target). If any corporation is an affected target as of the day Form 8023 is filed, a schedule must be attached to Form 8023 listing the name, address, and EIN of each such subject corporation.

Part III—Elections

Note: *The express election under section 338(g) and the protective carryover election are mutually exclusive.*

Rev. Proc. 92-85, 1992-42 I.R.B. 32, grants a purchasing corporation an automatic 12-month extension of time to make either the protective carryover basis election (election 1) or the offset prohibition election (election 2) if the corporation makes the election on Form 8023 filed within 12 months of the original deadline for making these

elections. When making an election under this revenue procedure, please type or print across the top of Form 8023 "FILED PURSUANT TO REV. PROC. 92-85." For more information about the automatic 12-month extension of time for making these elections, see Rev. Proc. 92-85.

Attachments to Form 8023

See Temporary Regulations section 1.338-1T for the "required data" that must be submitted with Form 8023 when an express election under section 338(g) is made. Other elections and subelections require additional data and materials that differ from the "required data" for express elections. Failure to timely provide the additional data and materials required by the regulations may result in the imposition of penalties.

Attach a copy of the completed Form 8023 to the final return of the target corporation and to the first return of the new corporation. These requirements apply to the returns of the target for which the election is expressly made as well as to the returns of affected targets. For a special rule for a foreign target corporation not subject to U.S. tax, see the regulations.

Special Rule for Elections Made by U.S. Shareholders of Certain Controlled Foreign Purchasing Corporations

U.S. shareholders of certain controlled foreign purchasing corporations may make the section 338 express election for the corporation. To do so, they must complete Form 8023 and attach a statement to the form showing the name, address, identifying number, and stock interest of each U.S. shareholder. Do not sign Form 8023. Instead, refer to the attached statement, which must be jointly signed by each U.S. shareholder. When signing the statement, each U.S. shareholder must state under penalties of perjury that the stock interest for that shareholder specified in the statement is correct. As an alternative to a jointly signed statement, the shareholder signatures may be contained in separate statements attached to Form 8023. If a U.S. shareholder is not an individual or has delegated authority to sign the statement, the person signing must state under penalties of perjury that he or she is authorized to sign the statement for the U.S. shareholder. Each U.S. shareholder making the election must attach a copy of Form 8023 and its required attachments to **Form 5471**, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, and file them for the foreign purchasing corporation's tax year that includes the acquisition date.

Signatures

If the qualified stock purchase is made by two or more corporations that are members of the same affiliated group, Form 8023 must be signed by a person authorized to act on behalf of each corporation. To do this, provide the signatures, dates, and titles of those persons in a "signature attachment" to Form 8023 under a heading containing the two sentences printed immediately above the signature line on the form. In this case, write "signature attachment" on the signature line on Form 8023.

If the purchasing corporation is included in a consolidated return for the tax year in which the Form 8023 is filed, see Regulations section 1.1502-77.