



Instructions for Form 8023-A

(May 1994)

Corporate Qualified Stock Purchases

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:

Recordkeeping9 hr., 34 min.

Learning about the law or the form1 hr., 23 min.

Preparing and sending the form to the IRS1 hr., 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Attention: Reports Clearance Officer, PC:FP, Washington, D.C. 20224, and the **Office of Management and Budget**, (Paperwork Reduction Project 1545-1428), Washington, D.C. 20503. Do not send this form to either of these offices. Instead, see **When and Where To File** on this page.

General Instructions

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

Purpose of Form

To make elections under section 338 and to implement the consistency rules of section 338, Form 8023-A must be filed when the purchasing corporation makes a qualified stock purchase (QSP) of another corporation (the "target" corporation). The form must be filed whether or not a section 338 election is made for the target.

If a section 338 election is made for the target, the target is treated for purposes of Subtitle A of the Code as having sold all of its assets on the acquisition date and then as having purchased the assets as a new corporation ("new" target) on the day after the acquisition date. (For periods on or before the acquisition date, the target is sometimes referred to as the "old" target.) In addition, the target must recognize gain

or loss on the deemed sale of its assets (the "deemed sale gain").

If a section 338(h)(10) election is made for the target, the target generally is treated as making the deemed sale and liquidating. The treatment of the target shareholders generally is consistent with the sale and liquidation treatment. A section 338(h)(10) election cannot be made for a target corporation unless it is acquired from a selling consolidated group, a selling affiliate, or an S corporation shareholder.

Who Must File

The purchasing corporation must file Form 8023-A for the target. In certain cases, however, a United States shareholder of a foreign purchasing corporation may file Form 8023-A on behalf of the purchasing corporation. See Regulations section 1.338-1(g)(3). If a section 338(h)(10) election is made for a target, Form 8023-A must be filed jointly by the purchasing corporation and the common parent of the selling consolidated group (or selling affiliate or S corporation shareholder).

One Form 8023-A (rather than multiple Forms 8023-A) may be used for targets that each have the same acquisition date, were members of the same affiliated group immediately before the acquisition date, and are members of the same affiliated group immediately after the acquisition date. All of the information that would be required for the additional target if a separate Form 8023-A were filed must be provided for that target in schedules attached to the form.

When and Where To File

To make a section 338 election for the target corporation, file Form 8023-A with the Internal Revenue Service Center where the Federal income tax return that includes the deemed sale gain is or will be filed. File Form 8023-A by the 15th day of the 9th month beginning after the month that includes the acquisition date. Form 8023-A must be attached to the final income tax return for the old target and the first return of the new target.

Whether or not a section 338 election is made for the target, the purchasing corporation must attach Form 8023-A to its Federal income tax return for the tax year that includes the acquisition date.

Special rules may apply to foreign purchasing corporations or foreign targets. The time during which a qualifying foreign purchasing corporation may make a section 338 election for a qualifying foreign target is described in Regulations section 1.338-1(g)(1)(iii). A foreign purchasing corporation that does not file a Federal income tax return must file Form 8023-A with the Office of Assistant Commissioner (International), Attention: Chief of Examination, 950 L'Enfant Plaza South S.W., Washington, DC 20024. In addition, if a section 338 election is made for a foreign target for which a **Form 5471**, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, is filed, Form 8023-A must be attached to the last Form 5471 for the old target and the first Form 5471 for the new target.

Definitions

Acquisition date.—The acquisition date is the first day on which a QSP has occurred.

Qualified stock purchase.—A QSP 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 in computing voting power or value. See section 338(h)(1) for the definition of "12-month acquisition period" and section 338(h)(3) for the definition of "purchase."

Specific Instructions

Employer identification number.—An employer identification number (EIN) must be included for each corporation identified in Section A, B, or C, or on attached schedules. An EIN is not required if the corporation does not have, and is not otherwise required to have, an EIN.

Country of incorporation.—When identifying the country of incorporation, include political subdivisions, if any.

Tax year ending.—The tax year ending date of any corporation is determined without regard to any QSP.

Attachments.—Attach a schedule identifying any assets to which the carryover basis rules of Regulations section 1.338-4 apply, the consideration paid for each asset, and the basis for each asset as determined under the carryover basis rules. Also, provide the name of each

corporation buying or selling such an asset.

Attach a schedule listing the date of each purchase of foreign target stock, the purchaser's name, and the purchased percentage, the place of incorporation of the target, the name and place of incorporation of any selling entities, and whether any affirmative answer was indicated in any part of question 6 of Section D in regard to the target.

Section A—Purchasing Corporation

If more than one purchasing corporation acquires the stock of a target corporation listed in Section B or identified in an attached schedule, attach a schedule that lists which target stock was acquired by each purchasing corporation. The schedule should also provide the information requested on this Form 8023-A and instructions for each purchasing corporation (other than the purchasing corporation listed in Section A).

Section B—Target Corporation

Note: *If an election is made for a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company, the purchasing corporation must send written notice of the election to affected U.S. shareholders of the foreign target. See Regulations section 1.338-1(g)(4). Attach a schedule containing the name, address, and employer identification number or social security number of each such shareholder.*

If Form 8023-A is filed for more than one target, attach a schedule providing for each target corporation the information requested in Sections B, C, and D.

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

Section C—Selling Shareholders

If Form 8023-A is filed for a target corporation that is an S corporation and a section 338(h)(10) election is made for that target, the information requested in Section C must be provided for each shareholder who sells target stock in the QSP in Section C and, if necessary, in an attached schedule.

Line 3b—Identifying number.—Enter the social security number to identify an individual. Enter the employer identification number to identify a corporation.

Section E—Elections under Section 338

Lines 7 and 8—Section 338 elections.—If a section 338 election is made for the

target corporation listed in Section B, attach a schedule as appropriate listing the amount of (a) the consideration paid for the target stock in the QSP, (b) the liabilities of the target corporation on the acquisition date, and (c) the tax liability on the deemed sale (if a section 338(h)(10) election is not filed). In addition, describe any other relevant items and list the aggregate fair market value by class of the Class II and Class III assets of the target corporation on the acquisition date. Also, identify each intangible amortizable Class III asset, specifying its fair market value and useful life. Do not file **Form 8594**, Asset Acquisition Statement under Section 1060, for the deemed sale.

Line 9—Gain recognition election.—If a gain recognition election is made, it applies to any "P" group member. If a section 338(h)(10) election is made for a target, a gain recognition election is deemed made by each P group member. A "P" group member is any corporation that, on the acquisition date, is a member of the affiliated group that includes the purchasing corporation and holds nonrecently purchased target stock. See Regulations section 1.338(b)-1(e)(2). If a gain recognition election is made or deemed made for a target corporation, attach a schedule providing the target corporation's name, and the name, address, and EIN of each P group member. The schedule must also contain the following declaration (or a substantially similar declaration): "EACH CORPORATION HOLDING STOCK SUBJECT TO THIS GAIN RECOGNITION ELECTION AGREES TO REPORT ANY GAIN UNDER THE GAIN RECOGNITION ELECTION IN ITS FEDERAL INCOME TAX RETURN (INCLUDING AN AMENDED RETURN, IF NECESSARY) FOR THE TAX YEAR IN WHICH THE ACQUISITION DATE OF TARGET OCCURS." The schedule must be signed on behalf of each P group member by a person who states under penalties of perjury that he or she is authorized to act on behalf of the corporation.

A gain recognition election for the target also applies to any target affiliate having the same acquisition date as the target. Attach a schedule with the information requested above for each target affiliate.

Line 10.—If Form 8023-A is filed to make an election under section 338 for any corporation other than the target listed in Section B, attach a schedule stating which elections are made for each target and providing the information requested on lines 7, 8, and 9, Section E. Include appropriate signatures (or signature attachments), for each target.

Special Rules for Elections Made By United States Shareholders of Certain Controlled Foreign Purchasing Corporations

U.S. shareholders of certain controlled foreign purchasing corporations may make the section 338 election for the corporation. To do so, complete Form 8023-A and attach a statement to the form showing the name, address, identifying number, and stock interest of each U.S. shareholder. Instead of signing Form 8023-A, place a reference in the signature space to the attached statement. The statement must be 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 shown on separate statements attached to Form 8023-A. If a U.S. shareholder is not an individual or does not have 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-A and its required attachments to Form 5471, and file the forms for the foreign purchasing corporation's tax year that includes the acquisition date. See Regulations section 1.338-1(g)(3).

Signature

If a QSP of a target corporation is made by two or more corporations that are members of the same affiliated group, Form 8023-A must be signed by a person authorized to act on behalf of each corporation. Also, if a section 338(h)(10) election is made for an S corporation, Form 8023-A must be signed by each S corporation shareholder who sells target stock in the QSP. The signatures, dates, and titles (if applicable) of those persons must be provided in a "SIGNATURE ATTACHMENT" to Form 8023-A under a heading containing the sentence printed immediately above the signature line on the form. You must place a reference to the signature attachment in the signature space on Form 8023-A.

If the common parent of a consolidated group is the agent of the purchasing corporation under Regulations section 1.1502-77, the person authorized to sign the statement of section 338 election is the person authorized to act on behalf of that common parent.

