



Instructions for Form 8883

(Rev. December 2008)

Asset Allocation Statement Under Section 338

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

General Instructions

What's New

Final Regulations under section 338 provide details on the effect of the section 338 election on insurance company targets. See Regulations sections 1.338-1(b)(2)(vii) and 1.338-11.

Purpose of Form

Use Form 8883, Asset Allocation Statement Under Section 338, to report information about transactions involving the deemed sale of corporate assets under section 338. This includes information previously reported on Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

Although you use Form 8023 to make an election under section 338, you must also file Form 8883 to supply information relevant to the election. Timely file Form 8023 even if you do not have all the information required to be supplied separately on Form 8883.

If an election is made under section 338 for a qualified purchase of stock of a target corporation, the target corporation (old target) is deemed to sell its assets to a new corporation (new target) at the close of the acquisition date. See Regulations section 1.338-1 for details.

There are two types of section 338 elections. A section 338(g) election is made only by the purchasing corporation. A section 338(h)(10) election is made jointly by both the old target shareholders and the purchasing corporation. Form 8883 must be used to make both types of section 338 elections.

Who Must File

For elections under sections 338(g) and 338(h)(10) both the old target and the new target must file Form 8883.

When and How To File

Generally, attach Form 8883 to the return on which the effects of the section 338 deemed sale and purchase of the target's assets are required to be reported.

Old target (S corporation for a section 338(h)(10) election). For a section 338(h)(10) election for an S corporation target, attach Form 8883 to Form 1120S, U.S. Income Tax Return for an S Corporation.

Old target (consolidated return). If the old target is the common parent of a consolidated group, attach Form 8883 to

its final consolidated return ending on the acquisition date. If the old target is a member (not the parent) of a selling group that will file a consolidated return and is making a section 338(h)(10) election, attach the form to the selling group's consolidated return for its tax year including the acquisition date.

However, if an election under section 338(g) is made for the target, attach the form to the old target's deemed sale return; not to the selling group's consolidated return. See Regulations section 1.338-10(a)(2) through (4) for details.

New target. Attach Form 8883 to the first return of the new target. If, on the day after the acquisition date, the new target is a member of a group filing a consolidated return, attach the form to the consolidated return that includes the day after the acquisition date.

Foreign target. If a section 338(g) election is made for a foreign target for which Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, must be filed:

- The seller (or U.S. shareholder) must attach a copy of Form 8883 to the last Form 5471 for the old foreign target.
- The purchaser (or its U.S. shareholder) must attach a copy of Form 8883 to the first Form 5471 for the new foreign target.

Supplemental Form 8883

If the amount allocated to any asset is increased or decreased after the year in which the sale occurs, any affected party must complete Parts I through IV and VI of Form 8883 and attach the form to the income tax return for the year in which the increase or decrease is taken into account. See the instructions for Part VI and Regulations section 1.338-7 for more information.

Penalties

If you do not file a correct Form 8883 by the due date of your return and you cannot show reasonable cause, you may be subject to penalties. See sections 6721 through 6724.

Elections for Multiple Targets Under Section 338

Although one Form 8023 (rather than multiple Forms 8023) may be used for targets that

- each have the same acquisition date
- were members of the same affiliated group immediately before the acquisition date (defined below), and
- are members of the same affiliated group (defined below) immediately after

the acquisition date, file a separate Form 8883 for each target corporation.

Definitions

A **qualified stock purchase (QSP)** is the purchase of stock of at least 80% of the total voting power and value of the stock of a corporation by another corporation during a 12-month period.

A **12-month acquisition period** is the 12-month period beginning with the first acquisition by purchase of stock included in the QSP.

The **acquisition date** is the first date on which a QSP has occurred.

Recently purchased target stock is any stock in the target corporation that is held by the purchasing corporation on the acquisition date and was purchased by the corporation during the 12-month acquisition period. See section 338(h)(1) for special rules for stock acquisitions from related corporations.

An **affiliated group** is an affiliated group as defined in section 1504(a), determined without regard to the exceptions contained in section 1504(b).

A corporation will be treated as a **target affiliate** (as defined in section 338(h)(6)) of the target corporation if each corporation was, at any time during much of the consistency period that ends on the acquisition date of the target corporation, a member of an affiliate group which had the same common parent. Except as otherwise provided, a target affiliate does not include a foreign corporation, a DISC, or a corporation to which section 936 applies.

Class I assets are cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions.

Class II assets are actively traded personal property within the meaning of section 1092(d)(1) and Regulations section 1.1092(d)-1 (determined without regard to section 1092(d)(3)). In addition, Class II assets include certificates of deposit and foreign currency even if they are not actively traded personal property. Class II assets do not include stock of target affiliates, whether or not actively traded, other than actively traded stock described in section 1504(a)(4). Examples of Class II assets include U.S. government securities and publicly traded stock.

Class III assets are assets that the taxpayer marks-to-market at least annually for federal income tax purposes and debt instruments (including accounts

receivable). However, Class III assets do not include (a) debt instruments issued by persons related at the beginning of the day following the acquisition date to the target under section 267(b) or 707; (b) contingent debt instruments subject to Regulations sections 1.1275-4, and 1.483-4, or section 988, unless the instrument is subject to the noncontingent bond method of Regulations section 1.1275-4(b) or is described in Regulations section 1.988-2(b)(2)(i)(B)(2); and (c) debt instruments convertible into the stock of the issuer or other property.

Class IV assets are stock in trade of the taxpayer or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

Class V assets are all assets other than Class I, II, III, IV, VI, and VII assets.

Note. Furniture and fixtures, buildings, land, vehicles, and equipment, which constitute all or part of a trade or business as defined in Regulations section 1.1060-1(b)(2) are generally Class V assets.

Class VI assets are all section 197 intangibles (as defined in section 197) except goodwill and going concern value. Section 197 intangibles include:

- Workforce in place;
- Business books and records, operating systems, or any other information base, process, design, pattern, know-how, formula, or similar item;
- Any customer-based intangible;
- Any supplier-based intangible;
- Any license, permit, or other right granted by a government unit;
- Any covenant not to compete entered into in connection with the acquisition of an interest in a trade or a business; and
- Any franchise trademark, or trade name (however, see exception below for certain professional sports franchises).

The term "section 197 intangible" does not include any of the following:

- An interest in a corporation, partnership, trust, or estate;
 - Interests under certain financial contracts;
 - Interests in land;
 - Certain computer software;
 - Certain separately acquired interests in films, sound recordings, video tapes, books, or other similar property;
 - Interests under leases of tangible property;
 - Certain separately acquired rights to receive tangible property or services;
 - Certain separately acquired interests in patents or copyrights;
 - Interests under indebtedness;
 - Professional sports franchises acquired before October 23, 2004; and
 - Certain transactions costs.
- See section 197(e) for further information.

Class VII assets are goodwill and going concern value (whether or not the

goodwill or going concern value qualifies as a section 197 intangible).

Specific Instructions

Part I. Filer's Identifying Information

Line 1a. Enter the name as shown on your income tax return.

Line 1b. Enter the corporation's employer identification number (EIN). If the form is filed by an individual U.S. shareholder for a foreign target, enter the shareholder's social security number (SSN).

Line 1c. Indicate by checking the applicable box whether you are filing this form because you are filing the federal income tax return that reflects the tax results for the old target of a section 338 election, or because you are filing the federal income tax return that reflects the tax results for the new target of a section 338 election. See *When and How To File* on page 1 for a discussion of who files the tax returns reporting the section 338 results for the old target and new target, respectively.

Part II. Other Party's Identifying Information

Identify the taxpayer that files the U.S. income tax return, if any, reflecting the tax results under section 338 for the other party to the transaction. If the tax results of the transaction are reported on a consolidated return for the other party, provide the identifying information of the common parent of the consolidated group instead of the old or new target. If the old or new target is a controlled foreign corporation (CFC) and does not file a U.S. income tax return, identify the U.S. shareholder owning the largest interest in the CFC (or if the U.S. shareholder is a member of a consolidated group, the common parent of that group).

Line 2b. Enter the identifying number (EIN or SSN) of the other party.

Part III. Target Corporation's Identifying Information

Complete Part III if the target identifying information is not provided in Part I (that is, if Form 8883 is filed by the common parent of a consolidated group including the target or by the seller, purchaser, or U.S. shareholder filing for a foreign target).

Line 3b. An EIN is not required if a party does not have, and is not otherwise required to have, an EIN.

Line 3c. When identifying the country of incorporation, include political subdivisions, if any.

Part IV. General Information

Both the old and the new target must complete lines 4a through 8g.

Line 5a. Enter the amount of consideration paid (without regard to

selling or acquisition costs) for the recently purchased target stock (defined on page 1). Include only amounts actually paid to the seller(s) of the target stock.

Line 5b. *New Target:* Enter the acquisition costs, including any other amounts capitalized in the purchasing corporation's basis in the recently purchased target stock.

Old Target: Enter the selling costs of the selling consolidated group, selling affiliates, or S corporation shareholder(s) incurred in connection with the QSP that reduce the amount realized on the sale of recently purchased target stock.

Line 5c. Enter the amount of the target's liabilities as of the beginning of the day after the acquisition date. The old target's liabilities are also measured as of the beginning of the day after the acquisition date. However, see Regulations section 1.338-1(d) regarding certain transactions on the acquisition date. These liabilities may include tax consequences resulting from the deemed sale.

Line 5d. *New Target:* Enter the **adjusted grossed-up basis (AGUB)**. AGUB is the amount for which the new target is deemed to have purchased all of its assets from the old target. AGUB is the sum of:

- The grossed-up basis in the purchasing corporation's recently purchased target stock,
- The purchasing corporation's basis in nonrecently purchased target stock, and
- The liabilities of the new target (reported on line 5c).

See Regulations section 1.338-5 for additional information.

Old Target: Enter the **aggregate deemed sales price (ADSP)**. The ADSP is the amount for which the old target is deemed to have sold all of its assets in the deemed asset sale. ADSP is the sum of:

- The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock and
- The liabilities of the old target (reported on line 5c). Compute ADSP as follows:

1. Enter the amount from line 5a (stock price) _____
2. Divide the amount on line 1 by the percentage of target stock (by value, determined on the acquisition date) attributable to that recently purchased target stock _____
3. Enter the amount from line 5b (selling costs) _____
4. **Grossed-up amount realized on the sale.** Subtract line 3 from line 2 _____
5. Enter the amount from line 5c (target liabilities) _____
6. **ADSP.** Add line 5 to line 4. Enter here and on line 5d _____

For more information see Regulations section 1.338-4.

Part V. Original Statement of Assets Transferred

Allocation of consideration. An allocation of ADSP must be made to determine the old target's gain or loss on the deemed transfer of each asset, and an allocation of AGUB must be made to determine the new target's basis in each acquired asset. Use the residual method for making the allocation. The amount allocated to an asset, other than a Class VII asset, cannot exceed its fair market value (FMV) on the acquisition date. For purposes of this allocation, FMV is the gross fair market value not reduced by mortgages, liens, pledges, or other debt. The amount allocated to an asset is also subject to any applicable limits under the Internal Revenue Code or general principles of tax law.

Allocate consideration in Part V as follows:

1. Reduce the consideration by the amount of Class I assets.
2. Allocate the remaining consideration to Class II assets, then to Class III, IV, V, and VI assets in that order. For each class, allocate the remaining consideration to the class assets in proportion to their FMVs on the acquisition date (as discussed in the previous paragraph).
3. Allocate consideration to Class VII assets.

If an asset can be included in more than one class, choose the lower numbered class (for example, if an asset could be included in Class III or IV, choose Class III).

Line 9. For a particular class of assets, enter the total FMV of all the assets in the class and the total allocation

of the amount on line 5d, (ADSP or AGUB, whichever applies) to the class. For Classes VI and VII, enter the total FMV of Classes VI and VII combined, and the total allocation of the amount on line 5d (ADSP or AGUB, whichever applies) to Classes VI and VII combined.

Part VI. Supplemental Statement of Assets Transferred

Complete Parts I through IV and Part VI and file a new Form 8883 for each year that an increase or decrease in AGUB or ADSP occurs. If an increase or decrease in the amount to be allocated occurs after the purchase date, the increase or decrease must be allocated among the assets. The reallocation is made in the taxable year in which the increase or decrease occurs. Give the reason(s) for the increase or decrease in allocation. Also enter the tax year(s) and the form number of the income tax return with which the original Form 8883 and any supplemental Forms 8883 were filed. For example, enter "2007 Form 1120".

Increases. Allocate an increase in consideration by first allocating the increase in consideration to Class I and any remaining consideration to each of the following classes (Class II, III, etc.). The number of classes may vary depending on the year of the acquisition. Increase the amounts previously allocated to the assets in each class in proportion to their fair market values on the purchase date (do not allocate to any asset in excess of fair market value).

If an asset has been disposed of, depreciated, amortized, or depleted by the new target before the increase occurs, any amount allocated to that

asset by the new target must be properly taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized, or depleted.

Decreases. Allocate a decrease in consideration as follows:

1. Reduce the amount previously allocated to Class VII assets.
2. Reduce the amount previously allocated to Class VI assets, then to Class V, IV, III, and II assets in that order. Within each class, allocate the decrease among the class assets in proportion to their FMVs on the acquisition date (as discussed under *Increases* above).

You cannot decrease the amount allocated to an asset below zero. If an asset has a basis of zero at the time the decrease is taken into account because it has been disposed of, depreciated, amortized, or depleted by the new target, the decrease in consideration allocable to such asset must be properly taken into account under the principles of tax law applicable when the cost of an asset (previously reflected in basis) is reduced after the asset has been disposed of, depreciated, amortized, or depleted. An asset is considered to have been disposed of to the extent the decrease allocated to it would reduce its basis below zero.

Transitional rules for patents, copyrights, and similar property. For transactions occurring before January 6, 2000, the regulations applied special rules to the allocation to particular intangible assets of increases or decreases in consideration. See the regulations in effect prior to that time.

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

| | |
|--|-----------------|
| Recordkeeping | 16 hr., 30 min. |
| Learning about the law or the form | 3 hr., 40 min. |
| Preparing and sending the form to the IRS | 4 hr., 6 min. |

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