

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:CORP:B02
PLR-102218-17

Date:
May 1, 2017

TY:

Legend

- Purchaser =
- S Corporation Target =
- Shareholder =
- X =
- Date 1 =
- Date 2 =
- State A =
- State B =
- Company Official =

- Tax Professional =

Dear :

This letter responds to a letter from your authorized representative, dated January 9, 2017, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser, S Corporation Shareholder, and S Corporation Target are requesting an extension of time for S Corporation Target to file an election statement under § 1.336-2(h)(3)(iii) of the Income Tax Regulations (the "Election Statement") with respect to Purchaser's acquisition of X% of the stock of S Corporation Target from S Corporation Shareholder on Date 1. Additional information was submitted in correspondence dated March 20, 2017. The material information submitted is summarized below.

On Date 1, Purchaser, a State A limited liability company that is treated as a partnership for Federal income tax purposes, acquired X% of the stock of S Corporation Target, an S corporation formed under the laws of State B, from S Corporation Shareholder (the

“Disposition”). It has been represented that the Disposition qualified as a “qualified stock disposition” as defined in § 1.336-1(b)(6).

Prior to Date 2, the due date for S Corporation Target’s tax return for the taxable year that included Date 1, S Corporation Shareholder and S Corporation Target entered into two written, binding agreements providing that a section 336(e) election would be made with respect to the Disposition. The Election Statement was required to be filed by Date 2, and S Corporation Target’s tax return was timely filed prior to Date 2. Consistent with the terms of the Stock Purchase Agreement and the requirements of § 1.336-2(b), in filing its tax return, the S Corporation Target treated the Disposition as a sale of all of the assets of the S Corporation Target. However, for various reasons, the Election Statement was not timely filed. Subsequently, a request was submitted under § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to file the Election Statement. It has been represented that Purchaser, S Corporation Shareholder, nor S Corporation Target is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Regulations promulgated under section 336(e) permit certain sales, exchanges or distributions of stock of a corporation to be treated as asset dispositions if: (1) the disposition is a “qualified stock disposition” as defined in § 1.336-1(b)(6); and (2) a section 336(e) election is made.

Section 1.336-2(h)(3) provides that a section 336(e) election for an S corporation target is made by: (i) all of the S corporation shareholders, including those who do not dispose of any stock in the qualified stock disposition, and the S corporation target entering into a written, binding agreement, on or before the due date (including extensions) of the Federal income tax return of the S corporation target for the taxable year that includes the disposition date, to make a section 336(e) election; (ii) the S corporation target retaining a copy of the written agreement; and (iii) the S corporation target attaching the section 336(e) election statement, described in § 1.336-2(h)(5) and (6), to its timely filed (including extensions) Federal income tax return for the taxable year that includes the disposition date.

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).

The time for filing the Election Statement is fixed by the regulations (i.e., § 1.336-2(h)(3)(iii)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for S Corporation Target to file the Election Statement, provided Purchaser, S Corporation Shareholder, and S Corporation Target 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, S Corporation Shareholder, S Corporation Target, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Purchaser, S Corporation Shareholder, and S Corporation Target reasonably relied on a qualified tax professional who failed to timely file, or to advise them to timely file, the Election Statement, and that the request for relief was filed before the failure to file the Election Statement 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, S Corporation Shareholder, and S Corporation Target have 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 S Corporation Target to file the Election Statement with respect to the Disposition.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, S Corporation Target, having already filed a return as though a valid Election Statement was filed, must amend its previously filed return to attach a copy of this ruling letter along with the Election Statement to such return. Alternatively, if S Corporation Target files its return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date on, and the control number of, this ruling letter (May 1, 2017; PLR-102218-17).

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction consistently with the making of a section 336(e) election for the taxable year in which the transaction was consummated (and for any other affected taxable year).

The above extension of time is conditioned on the taxpayers' (i.e., Purchaser's, S Corporation Target's, and S Corporation Shareholder's) tax liabilities (if any) being not lower, in the aggregate, for all years to which the section 336(e) election applies than it would have been if the Election Statement had been timely filed (taking into account the

time value of money). No opinion is expressed as to the taxpayers' tax liabilities 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 Disposition qualifies as a "qualified stock disposition"; or (2) any other tax consequences arising from the section 336(e) election.

In addition, we express no opinion as to the tax consequences of filing the Election Statement 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 Statement late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we have 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 Statement, penalties and interest that would otherwise be applicable, in any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)