

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

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Refer Reply To:  
CC:CORP:B04  
PLR-108798-17

Date:  
September 12, 2017

In Re:

Legend

Corporation X =

Purchaser =

Seller =

Target =

Unrelated Corporation =

State A =

Date 1 =

Date 2 =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated March 13, 2017, submitted on behalf of Target and Corporation X, successor-in-interest to Seller, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election. Corporation X and Target are requesting an extension of time for Corporation X and Target to make an election under § 1.336-2(h)(1) of the Income Tax Regulations (“Election”) with respect to Seller’s disposition of all of the stock of Target on Date 1 (the “Stock Disposition”). The material information submitted in the March 13, 2017, letter and in subsequent correspondence is summarized below.

Immediately prior to the Stock Disposition, Purchaser was a State A limited liability company that was taxed as a partnership. Purchaser owned all of the outstanding stock of Seller, a State A corporation, and Seller owned all of the outstanding stock of Target, a State A limited liability company that was taxed as a corporation. Seller was the common parent of a consolidated group that included Target (“Seller Group”).

On Date 1, Seller distributed all of the stock of Target to Purchaser in redemption of a portion of Seller’s outstanding stock. On Date 2, as part of the same plan, Purchaser sold all of the outstanding Seller stock to Unrelated Corporation. It has been represented that the Stock Disposition qualified as a “qualified stock disposition” as defined in § 1.336-1(b)(6)(i).

Purchaser, Seller, and Target intended to make a section 336(e) election for the Stock Disposition but, for various reasons, a timely election was not fully made, as Seller and Target failed to enter into a written, binding agreement to make a section 336(e) election prior to the due date of the Seller Group’s consolidated return. Subsequently, this request was submitted, under § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to make the Election. It has been represented that neither Seller (by Corporation X) nor Target is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time of the request for relief and for which the new position requires or permits a regulatory election for which the relief is requested.

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)(1) provides that if the seller and target corporations are members of the same consolidated group, a section 336(e) election is made by completing the following requirements: (i) seller and target must enter into a written, binding agreement, on or before the due date (including extensions) of the consolidated group’s consolidated Federal income tax return for the taxable year that includes the disposition date, to make a section 336(e) election; (ii) the common parent of the consolidated group must retain a copy of the written agreement; (iii) the common parent must attach the section 336(e) election statement, described in § 1.336-2(h)(5) and (6), to the group’s timely filed (including extensions) consolidated Federal income tax return for the taxable year that includes the disposition date; and (iv) the common parent must provide a copy of the section 336(e) election statement to target on or before the due date (including extensions) of the consolidated group’s consolidated Federal income tax return.

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 making the Election is fixed by the regulations (*i.e.*, § 1.336-2(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Seller (by Corporation X) and Target to make the Election, provided Seller (and Corporation X) and Target acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief would not prejudice the interests of the government.

Information, affidavits, and representations submitted by Corporation X, Target, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely make the Election. The information establishes that Seller and Target reasonably relied on qualified tax professionals who failed to make, or advise them to timely make, the Election in full accordance with section 1.336-2(h)(1)(i) through (iv),

and that the request for relief was filed before the failure to properly make the Election 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 Seller (and Corporation X) and 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 Seller to make the Election with respect to the Stock Disposition.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER: (i) Seller (by Corporation X) and Target must enter into an agreement in accordance with § 1.336-2(h)(1)(i) to make the Election; and (ii) Seller (by Corporation X), having already filed its tax return with the section 336(e) election statement, must attach a copy of this letter to the return. The latter requirement may be satisfied by amending Seller's return to attach a copy of this letter to such return. Alternatively, if Seller's tax return was filed electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number (PLR-108798-17) of this letter.

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 all relevant taxpayers' 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 had been timely made (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 Stock 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 making 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, making the Election 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 Seller (by Corporation X), Target, Company Official, and Tax Professionals. However, the Director should verify all essential facts.

In addition, notwithstanding that an extension is granted under § 301.9100-3 to make the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter ruling is directed only to the taxpayers 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,

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