

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B01
PLR-137805-17

Date:
March 13, 2018

S Corporation Shareholder =

Purchaser =

S Corporation Target =

Date 1 =

Corporate Officer =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This letter responds to a letter dated December 11, 2017, submitted on behalf of S Corporation Shareholder, Purchaser, and S Corporation Target, requesting an extension of time under § 301.7701-3 of the Procedure and Administration Regulations to make an election. S Corporation Shareholder, Purchaser, and S Corporation Target are requesting an extension of time to make an election under § 1.336-2(h)(3) of the Income Tax Regulations (the "Election") with respect to the sale by S Corporation Shareholder of all of the stock of S Corporation Target to Purchaser on Date 1 (the

"Disposition"). The material information submitted for consideration is summarized below.

S Corporation Target is a professional corporation that elected to be treated as an S corporation for federal income tax purposes. On Date 1, Purchaser, an individual, acquired all of the stock of S Corporation Target from S Corporation Shareholder for cash. The parties have represented that this transaction qualifies as a "qualified stock disposition" as defined in § 1.336-1(b)(6) of the Income Tax Regulations.

S Corporation Shareholder, Purchaser, and S Corporation Target intended to make a section 336(e) election, but for various reasons, a timely election was not made. Subsequently this request was submitted, under § 301.9100-3, for an extension of time to make the Election. It has been represented that none of S Corporation Shareholder, Purchaser, or 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 under section 336(e) permit certain sales, exchanges, or dispositions 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 that 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 the 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 301.9100-2 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)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time to make the Election, provided, S Corporation Shareholder, Purchaser, 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 S Corporation Shareholder, Purchaser, S Corporation Target, Corporate Officer, Tax Professional 1, and Tax Professional 2 explain the circumstances that resulted in the failure to timely make the Election. The information establishes that S Corporation Shareholder, Purchaser, and S Corporation Target reasonably relied on a qualified tax professional who failed to make, or advise them to make, the Election, and that the request for relief was filed before the failure to timely 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 affidavits submitted and representations made, we conclude that S Corporation Shareholder, Purchaser, 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. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, to make the Election with respect to the Disposition.

NO LATER THAN 45 DAYS AFTER THE DATE ON THIS LETTER, (1) S Corporation Target and S Corporation Shareholder must enter into a written, binding agreement, in accordance with § 1.336-2(h)(3)(i), to make a section 336(e) election and (2) S Corporation Target must file the section 336(e) election statement in accordance with § 1.336-2(h)(3)(iii). The section 336(e) election statement must be attached to S Corporation Target's tax return for the taxable year that includes Date 1. In addition, a copy of this letter must be attached to S Corporation Target's return. Alternatively, if S Corporation Target files its return electronically, it may satisfy the requirement of attaching a copy of this letter to the return by attaching a statement to the return that provides the date on and control number (PLR-137805-17) of this letter ruling.

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 any other affected taxable year).

The above extension of time is conditioned on the taxpayers' (i.e., S Corporation Target's, Purchaser's, and S Corporation Shareholder's) tax liabilities (if any) being not

lower, in the aggregate, for all years to which the 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 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 any tax returns or making the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects 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 S Corporation Shareholder, Purchaser, S Corporation Target, Corporate Officer, Tax Professional 1, and Tax Professional 2. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-3 to make the Election, any penalties and interest that would otherwise be applicable, if any, continue to apply.

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

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

Sincerely,

Ken Cohen

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