

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:CORP:1  
PLR-130509-17

Date:  
March 14, 2018

Legend

Target =

Corp X =

Date 1 =

Company Official &  
Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated October 5, 2017, submitted on behalf of Target and Corp X, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension for Target and Corp X to make a protective election under § 1.336-2(h) of the Income Tax Regulations (the "Protective Election") with respect to Corp X's disposition of all of the stock of Target on Date 1. Additional information was submitted in a letter dated January 4, 2018. The material information submitted for consideration is summarized below.

Corp X was the common parent of a consolidated group. On Date 1, Corp X distributed all the stock of Target to its shareholders in a transaction intended to qualify under

§ 355 of the Code and which may also have been described in § 355(d) or (e) (the “Stock Disposition”).

Target and Corp X intended to make a protective section 336(e) election for the Stock Disposition but, for various reasons, an election statement under § 1.336-2(h)(5) and (6) may not have been timely filed with the appropriate return.

Subsequently, this request was submitted, under § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to make the Protective Election. Target and Corp X have each represented that it is not attempting to alter a return position taken for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the request for relief (taking into account any qualified amended return within the meaning of § 1.6664-2(c)(3)). The period of limitations on assessment under § 6501(a) has not expired for the tax year in which the Protective Election was required to be made or any subsequent tax year.

Regulations promulgated under § 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), (2), and (3) provide the time and manner for making a section 336(e) election for consolidated groups, non-consolidated/non-S corporation targets, and S corporation targets, respectively. Among the requirements is that a written, binding agreement to make a section 336(e) election be entered into on or before the due date of the specified tax return(s) and that the election statement described in § 1.336-2(h)(5) and (6) be attached to the appropriate return(s).

Section 1.336-2(j) provides that taxpayers may make a protective election in connection with a transaction, and that such election will have no effect if the transaction does not constitute a qualified stock disposition as defined in § 1.336-1(b)(6), but will otherwise be binding and irrevocable.

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 a section 336(e) 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 Target and Corp X to make the Protective Election, provided Target and Corp X 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 Target, Corp X, and Company Official & and Tax Professional explain the circumstances that resulted in the failure to timely file the Protective Election. The information establishes that Target and Corp X reasonably relied on a qualified tax professional who failed to make, or advise them to timely make, the Protective Election and that the request for relief was filed before the failure to properly make the Protective 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 Target and Corp X 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 60 days from the date on this letter, to file the Protective Election with respect to the Stock Disposition.

WITHIN 60 DAYS OF THE DATE ON THIS LETTER, all parties having timely entered into the written, binding agreement to make a section 336(e) election, and all appropriate parties having attached the section 336(e) election statement to its return, such appropriate party or parties must attach a copy of this letter to the appropriate return, or, if the return is filed electronically, this requirement may be satisfied by attaching a statement to the return that provides the date on and control number (PLR-130509-17) of this letter.

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 Protective 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 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 Protective 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 Protective Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Target, Corp X, and Company Official & Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to make the Protective 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,

*Ken Cohen*

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

cc: