

Internal Revenue Service

Number: **201910015**
Release Date: 3/8/2019

Index Number: 336.05-00, 9100.22-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05
PLR-127782-18

Date:

December 04, 2018

Legend

Seller Parent =

Seller =

Target =

Purchaser Parent =

Purchaser =

Date 1 =

Date 2 =

Date 3 =

Company Official =

Tax Professionals =

Dear _____ :

This letter responds to a letter dated August 29, 2018, submitted on behalf of Seller Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election. Seller Parent, the common parent of a consolidated group that included Seller and Target (the "Seller Parent Group"), is requesting an extension of time to make an election under § 1.336-2(h)(1) of the Income Tax Regulations (the "Election") with respect to Seller's disposition of all the issued and outstanding stock of Target. Additional material was submitted in a letter dated November 14, 2018. The material information submitted is summarized below.

On Date 1, Seller and Purchaser entered into a purchase agreement pursuant to which Purchaser, a limited liability company disregarded as separate from Purchaser Parent for U.S. federal tax purposes, agreed to purchase all the issued and outstanding shares of Target's stock from Seller (the "Stock Disposition"). The purchase agreement included a provision conferring upon Purchaser the sole discretion to decide whether a section 336(e) election should be made with respect to the Stock Disposition and requiring cooperation among Seller, Target, and Purchaser to make the election in the event that Purchaser determined one should be made.

On or about Date 2, Purchaser informed Seller's legal counsel that, in accordance with the power granted to it in the purchase agreement, Purchaser had determined that a section 336(e) election should be made with respect to the Stock Disposition.

On Date 3, Purchaser acquired all the issued and outstanding shares of Target's stock from Seller in the Stock Disposition. The section 336(e) election agreement was executed by Seller and Target on or about the same date. It has been represented that the Stock Disposition qualified as a "qualified stock disposition" as defined in § 1.336-1(b)(6). Target subsequently converted under state law to a limited liability company.

The parties 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 Parent failed to include, as required by § 1.336-2(h)(1)(iii), the section 336(e) election statement with the Seller Parent Group's timely filed consolidated federal income tax return for the taxable year

that included Date 3. 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 the parties are not 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 (i) the disposition is a “qualified stock disposition” as defined in § 1.336-1(b)(6); and (ii) 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 and Target to make the Election, provided Seller Parent, Seller, Purchaser, 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 Seller Parent, Purchaser, 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 § 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 Parent, Seller, Purchaser, 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, to make the Election with respect to the Stock Disposition.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER: Seller Parent must file the section 336(e) election statement in accordance with § 1.336-2(h)(1)(iii) and provide a copy to Target. The section 336(e) election statement must be attached to Seller Parent Group's consolidated federal income tax return for the taxable year including Date 3. In addition, a copy of this letter must be attached to the return. Alternatively, if Seller Parent Group's tax return was filed electronically, this latter requirement may be satisfied by attaching a statement to the return that provides the date and control number (PLR-127782-18) on 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 Stock Disposition was consummated (and for any other affected taxable year).

The above extension of time is conditioned on Seller Parent Group's tax liability (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 Seller Parent Group's tax liability 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 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 Parent, Purchaser, 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 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

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