

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.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-116794-19

Date:

January 09, 2020

LEGEND

LLC =

S Corporation Target =

Purchaser =

DE =

Shareholder =

State A =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear _____ :

This letter responds to a letter dated July 2, 2019, submitted on behalf of LLC, as successor of S Corporation Target, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser, LLC, and Shareholder (collectively, “the Parties”) are requesting an extension of time to properly execute the agreement referenced in §1.336-2(h)(3)(i) of the Income Tax Regulations (the “Agreement”), and file the election statement under §1.336-2(h)(3)(iii) (the “Election Statement”) with respect to Purchaser’s acquisition of all of the stock of S Corporation Target from Shareholder on Date 1. Additional information was submitted subsequently. The material information submitted is summarized below.

S Corporation Target was a State A corporation that elected to be treated as an S corporation for federal income tax purposes. Purchaser is an entity that is treated as a partnership for federal income tax purposes. On Date 1, Purchaser, through DE, an entity that is disregarded for federal income tax purposes, acquired all of the stock of S Corporation Target from Shareholder (the “Disposition”). It has been represented that the Disposition qualified as a “qualified stock disposition” as defined in §1.336-1(b)(6). On Date 2, S Corporation Target converted to a limited liability company under the laws of State A (“LLC”). LLC is a disregarded entity for federal income tax purposes, whose sole owner, for federal income tax purposes, is Purchaser.

The Parties intended for the stock sale to be treated as an asset sale, but for various reasons, a timely section 336(e) election was not made. Subsequently, a request was submitted under §301.9100-3 for an extension of time to enter into the Agreement and file the Election Statement. It has been represented that none of the Parties 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 entering into the Agreement and filing the Election Statement is fixed by the regulations (i.e., §1.336-2(h)(3)(i) and (iii)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time to enter into the Agreement and file the Election Statement, provided the Parties 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 the Parties, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely enter into the Agreement and timely file the Election Statement. The information establishes that the Parties reasonably relied on a qualified tax professional who failed to advise them to timely enter into the Agreement and timely file the Election Statement, and that the request for relief was filed before the failure to enter into the Agreement or 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 the Parties 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 enter into the Agreement and file the Election Statement.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, LLC, as successor of S Corporation Target, and Shareholder must enter into a written, binding agreement to make the section 336(e) election, and LLC, as successor of S Corporation Target, must file the Election Statement in accordance with §1.336-2(h)(3)(iii). The Election Statement must be attached to S Corporation Target's tax return for the taxable year including Date 1. In addition, a copy of this letter must be attached to S Corporation

Target's return. Alternatively, if S Corporation Target's return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement that provides the date on, and control number (PLR-116794-19) 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 for any other affected taxable year).

The above extension of time is conditioned on all relevant parties' 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 Agreement had been timely entered into and the Election Statement had been timely filed (taking into account the time value of money). No opinion is expressed as to the parties' 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 making the section 336(e) 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, filing the section 336(e) 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 the Parties, Company Official, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the section 336(e) election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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

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

Sincerely,

T. Ian Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)