

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:

CC:CORP:BO2

PLR-117361-21

Date:

January 20, 2022

Legend

LLC 1 =

S Corporation Target 1 =

LLC 2 =

S Corporation Target 2 =

Purchaser =

Entity =

Shareholders 1 =

Shareholders 2 =

State A =

State B =

Date 1 =

%X =

Company Official 1 =

Company Official 2 =

Dear :

This letter responds to a letter dated August 27, 2021, submitted on behalf of LLC 1 (as successor of S Corporation Target 1), LLC 2 (as successor of S Corporation Target 2), Purchaser, Entity, Shareholders 1, and Shareholders 2 (the "Parties") requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file respective elections. The Parties are requesting extensions of time to file the election statement under §1.336-2(h)(3)(iii) (the "Election Statement") with respect to (i) Purchaser's (through Entity) acquisition of all the stock of S Corporation Target 1 from Shareholders 1 on Date 1, and with respect to (ii) Purchaser's (through Entity) acquisition of %X of the stock of S Corporation Target 2 from the majority of Shareholders 2 on Date 1. The material information submitted is summarized below.

S Corporation Target 1 and S Corporation Target 2 each was a State A corporation that elected to be treated as an S corporation for federal income tax purposes. S Corporation Target 1 was owned by Shareholders 1 and S Corporation Target 2 was owned by Shareholders 2. Immediately prior to Date 1, Purchaser was a partnership for federal income tax purposes. On Date 1, Purchaser (through Entity, then a disregarded entity for federal income tax purposes) acquired all the stock of S Corporation Target 1 from Shareholders 1 ("Disposition 1") and %X (more than 80%) of the stock of S Corporation Target 2 from the majority of Shareholders 2 ("Disposition 2"). It has been represented that Disposition 1 and Disposition 2 each qualified as a "qualified stock disposition" as defined in §1.336-1(b)(6). Subsequently, S Corporation Target 1 and S Corporation Target 2 each converted to a limited liability company under the laws of State B (respectively, "LLC 1" and "LLC 2") and LLC 1 became a disregarded entity for federal income tax purposes and LLC 2 became a partnership for federal income tax purposes. In addition, Entity became a partnership for federal income tax purposes.

The Parties intended to make a section 336(e) election for each of Disposition 1 and Disposition 2 but, for various reasons, timely elections were not fully made. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the respective Election Statements. The Parties each represented that they are not 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.

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 filing the Election Statement is fixed by the regulations (i.e., §1.336-2(h)(3)(iii)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time to file the respective Election Statements, provided the Parties 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 the Parties, Company Official 1, and Company Official 2 explain the circumstances that resulted in the failure to timely file the respective Election Statements. The information establishes that the request for relief was filed before the failure to file the respective Election Statements was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

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 75 days from the date on this letter, to file the respective Election Statements.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, LLC 1, as successor of S Corporation Target 1, and LLC 2, as successor of S Corporation Target 2, must each file the Election Statement in accordance with §1.336-2(h)(3)(iii). The Election Statement for Disposition 1 must be attached to the tax return for S Corporation Target 1 for the taxable year including Date 1 and the Election Statement for Disposition 2 must be attached to the tax return for S Corporation Target 2 for the taxable year including Date 1. In addition, a copy of this letter must be attached to each of the returns for S Corporation Target 1 and S Corporation Target 2. Alternatively, if S Corporation Target 1 or S Corporation Target 2 files its return electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to the return that provides the date on, and control number (PLR-117361-21) of, this letter ruling.

WITHIN 150 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 Disposition 1 and Disposition 2 consistently with the making of a section 336(e) election for the respective taxable year in which Disposition 1 and Disposition 2 was consummated (and for any other affected taxable year).

The above extension of time is conditioned on the Parties' tax liabilities (if any) being not lower, in the aggregate, for all years to which the respective section 336(e) elections apply than it would have been if the respective Election Statements had been timely filed (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 Disposition 1 or Disposition 2 qualifies as a "qualified stock disposition"; or (2) any other tax consequences arising from the section 336(e) elections.

In addition, we express no opinion as to the tax consequences of filing the returns or making the section 336(e) elections 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) elections 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 1, and Company Official 2. 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) elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This 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.

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

Sincerely,

Thomas I. Russel

Thomas I. Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: