

Internal Revenue Service

Number: **202317012**

Release Date: 4/28/2023

9100.22-00, 9100.31-00, 336.05-00

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-116181-22

Date:

February 02, 2023

Legend

S Corporation Target =

Shareholders =

Purchaser =

DE =

Date 1 =

Date 2 =

Date 3 =

State =

Company Officials =

Tax Professional =

Dear _____ :

This letter responds to a letter dated August 15, 2022, and subsequent correspondence, submitted on behalf of S Corporation Target, Shareholders, and Purchaser (collectively, the "Parties") requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file two elections. The Parties are requesting extensions of time to: (1) file an election statement under §1.336-2(h)(3)(iii) of the Income Tax Regulations (the "Section 336(e) Election Statement") with respect to Purchaser's acquisition, through a disregarded entity, of all the stock of S Corporation Target from Shareholders on Date 1; and (2) file an election under §301.7701-3(c)(i) for S Corporation Target to be treated as a disregarded entity for federal tax purposes effective Date 2 (the "Disregarded Entity Election" and, together with the Section 336(e) Election Statement, the "Elections"). The material information submitted is summarized below.

FACTS

S Corporation Target is a limited liability company organized under the laws of State on Date 3 that elected to be treated as an S corporation for federal tax purposes effective Date 3. Purchaser is a limited liability company that is classified as a partnership for federal tax purposes. On Date 1, Purchaser, through DE, a disregarded entity for federal tax purposes, acquired all the stock of S Corporation Target from Shareholders (the "Stock Disposition"). It has been represented that the Stock Disposition qualified as a "qualified stock disposition" as defined in §1.336-1(b)(6).

The Parties intended to make a section 336(e) election for the Stock Disposition. The Parties also intended to elect to treat S Corporation Target as a disregarded entity effective Date 2. For various reasons, however, the Elections were not timely filed. Subsequently, this request was submitted, under §301.9100-3, for extensions of time to file the Elections. 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.

LAW AND ANALYSIS

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.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under §301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association (and thus a corporation under §301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(c)(1)(i) provides, in pertinent part, that an eligible entity may elect to change its classification by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified by the entity on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date the election is filed.

Section 301.7701-3(c)(1)(v) provides that an eligible entity that timely elects to be an S corporation under section 1362(a)(1) is treated as having made an election under this section to be classified as an association, provided that (as of the effective date of the election under section 1362(a)(1), the entity meets all other requirements to qualified as a small business corporation under section 1361(b). Subject to §301.7701-3(c)(1)(iv), the deemed election to be classified as an association will apply as of the effective date of the S corporation election and will remain in effect until the entity makes a valid election, under § 301.7701-3(c)(1)(i), to be classified as other than an association.

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. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 (including affidavits described in §301.9100-3(e)) 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).

In this case, the times for filing the Elections are fixed by the regulations (i.e., §1.336-2(h)(3)(iii) and §301.7701-3(c)(1)(iii)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time to file the Elections, 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 Officials, and Tax Professional explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that the request for relief was filed before the failure to file the Elections was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

CONCLUSION

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, the following extensions of time are granted under §301.9100-3:

- (i) The Parties are granted until 75 days from the date on this letter to file the Section 336(e) Election Statement with respect to the Stock Disposition; and
- (ii) The Parties are granted until 120 days from the date on this letter to make an election to treat S Corporation Target as a disregarded entity for federal tax purposes effective Date 2.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, S Corporation Target must file the Section 336(e) Election Statement in accordance with §1.336-2(h)(iii). The Section 336(e) 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 files its return electronically, it may satisfy the requirement of attaching a copy of this letter to the return by attaching a statement to its return that provides the date on, and control number (PLR-116181-22) of, this letter ruling.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, S Corporation Target should make the Disregarded Entity Election by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the form.

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 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 extensions of time are conditioned on no relevant party's tax liabilities (if any) being lower, in the aggregate, for all taxable years affected by the Elections than it would have been if the Elections 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. For example, 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 Elections.

In addition, we express no opinion as to the tax consequences of filing the return or making the 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 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 Officials, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that extensions are granted under §301.9100-3 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 representatives.

Sincerely,

Thomas I. Russell

Thomas I. Russell

Chief, Branch 1

Office of Associate Chief Counsel (Corporate)

cc: