

**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:1  
PLR-104403-24

Date:  
June 11, 2024

**LEGEND**

S Corporation Target =

Shareholder =

Purchasers =

Date 1 =

Date 2 =

Company Official =

Tax Professionals =

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

This letter responds to a letter dated February 26, 2024, submitted on behalf of S Corporation Target, Shareholder, and Purchasers (collectively, the “Parties”), requesting two rulings. First, the Parties request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to properly execute the agreement referenced in § 1.336-2(h)(3)(i) of the Income Tax Regulations (the “Section 336(e) Agreement”) and for S Corporation Target to file the election statement under § 1.336-2(h)(3)(iii) (the “Section 336(e) Election”) with respect to Purchasers’ acquisition of all the stock of S Corporation Target from Shareholder on Date 1. Second, S Corporation Target also requests relief to file a late S corporation election under section 1362(b)(5) of the Internal Revenue Code (Code) effective Date 2 (the “S Corporation Election” and, together with the Section 336(e) Election, the “Elections”). The material information submitted is summarized below.

On Date 1, Purchasers acquired all the stock of S Corporation Target from Shareholder (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 for the Stock Disposition to be treated as an asset sale. The Parties also intended to timely elect to treat S Corporation Target as an S corporation effective Date 2. However, for various reasons, timely elections were not made. Subsequently, a request was submitted under § 301.9100-3 for an extension of time to enter into the Section 336(e) Agreement and file the Section 336(e) Election as well as under section 1362(b)(5) to file the late S Corporation Election. 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.

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 1361(a) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1362(a)(1) generally provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under section 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.

Section 1362(b)(3) provides that if an S corporation election is made after the 15th day of the 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then such election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election or no section 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year (and section 1362(b)(3) shall not apply).

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 interest of the government. Section 301.9100-3(a).

The time for entering into the Section 336(e) Agreement and filing the Section 336(e) Election 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 Section 336(e) Agreement and file the Section 336(e) Election, 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, and Tax Professionals explain the circumstances that resulted in the failure to timely enter into the Section 336(e) Agreement and file the Section 336(e) Election. The information establishes that the request for relief was filed before the failure to enter into the Section 336(e) Agreement and file the Section 336(e) Election 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 enter into the Section 336(e) Agreement and file the Section 336(e) Election with respect to the Stock Disposition.

In addition, based on the facts and information submitted, including the representations made, we conclude that S Corporation Target has established reasonable cause for failing to make a timely election to be an S corporation. Thus, we conclude that S Corporation Target is eligible for relief under section 1362(b)(5). Accordingly, the Parties are granted until 120 days from the date on this letter to elect to treat S Corporation Target as an S corporation, effective Date 2.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, S Corporation Target and Shareholder must enter into a written, binding agreement in accordance with § 1.336-2(h)(3)(i) to make the Section 336(e) Election, and S Corporation Target must file the Section 336(e) Election in accordance with § 1.336-2(h)(3)(iii). The Section 336(e) Election 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-104403-24) of, this letter ruling.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, the S Corporation Election should be made by filing Form 2553, Election by a Small Business Corporation, with an effective date of Date 2, with the appropriate service center. A copy of this letter should be attached to the S Corporation Election.

WITHIN 150 DAYS OF THE DATE OF 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 the Parties' tax liabilities (if any) being not lower, in the aggregate, for all years affected by the Elections than such liabilities would have been if the Section 336(e) Agreement had been timely entered into and 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. We express no opinion as to: (1) whether the Stock Disposition qualifies as a "qualified stock disposition"; (2) whether S Corporation Target is a valid S corporation; or (3) 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, we have relied on certain statements and representations made by the Parties, Company Official, and Tax Professionals. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This 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.

Pursuant to the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Jonathan R. Neuville  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: