

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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PLR-135223-15

Date:

March 21, 2016

Legend

Corp X =

Entity Y =

Direct Purchaser =

S Corporation Target =

S Corporation Shareholder =

Date 1 =

Tax Professional =

Dear :

This letter responds to a letter dated October 20, 2015, and subsequent correspondence, submitted on behalf of Corp X and S Corporation Target, requesting

an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Corp X, as the owner of Entity Y, an entity currently disregarded as separate from its owner for Federal income tax purposes, and S Corporation Target are requesting an extension of time for S Corporation Target to file an election statement under § 1.336-2(h)(3)(iii) of the Income Tax Regulations (“Election Statement”) with respect to Direct Purchaser’s acquisition of the stock of S Corporation Target from S Corporation Shareholder on Date 1. The material information submitted is summarized below.

On Date 1, Direct Purchaser, an entity disregarded as separate from its owner for Federal income tax purposes, acquired all of the stock of S Corporation Target, from S Corporation Shareholder (the “Disposition”). Entity Y, then taxable as a partnership for Federal income tax purposes, was the owner of Direct Purchaser. It has been represented that the Disposition qualified as a “qualified stock disposition” as defined in § 1.336-1(b)(6). It has also been represented that all parties to the underlying transaction have reported or will report the transaction consistent with the section 336(e) election.

Prior to the due date for S Corporation Target’s tax return for the taxable year that included Date 1 (“Year 1”), S Corporation Shareholder and S Corporation Target entered into a written, binding agreement providing that a section 336(e) election would be made with respect to the Disposition. However, S Corporation Target did not timely file its tax return for Year 1. Subsequently, this request was submitted, under § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to file the Election Statement. It has been represented that none of the parties to whom the election under section 336(e) is relevant 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 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 for S Corporation Target to file the Election Statement, provided that Corp X, Entity Y, S Corporation Shareholder, and S Corporation 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 Corp X, on behalf of Entity Y, S Corporation Shareholder, S Corporation Target, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election Statement. The information establishes that the request for relief was filed before the failure to file the Election Statement 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 Entity Y, S Corporation Shareholder, and S Corporation 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, provided that all relevant returns are in fact filed consistently with a valid section 336(e) election having been made, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for S Corporation Target to file the Election Statement with respect to the Disposition.

WITHIN 45 DAYS OF THIS LETTER, S Corporation Target must file the Election Statement in accordance with § 1.336-2(h). The Election Statement must be attached to S Corporation Target's tax return for Year 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 and control number (PLR-135223-15) of this letter ruling.

WITHIN 120 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 extension of time is conditioned on all relevant taxpayers' 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 Election Statement 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 the Disposition qualifies as a "qualified stock purchase," 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 filing the return or Election Statement 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 Election Statement 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 taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election Statement, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) who requested 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 in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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