

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:B04

PLR-114547-16

Date:

October 17, 2016

S Corporation Target =

the S Corporation Target Shareholders =

Purchaser =

Corporation =

State A =

State B =

Date 1 =

Year 1 =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated May 2, 2016, submitted on behalf of S Corporation Target, the S Corporation Target Shareholders, and Purchaser requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. S Corporation Target, the S Corporation Target Shareholders, and Purchaser are requesting an extension of time for S Corporation Target to file a section 336(e) election statement under § 1.336-2(h)(3)(iii) of the Income Tax Regulations with respect to Purchaser's acquisition, through disregarded entities and Corporation, of all of the stock of S Corporation Target from the S Corporation Target Shareholders on Date 1 (the "Stock Transaction") and for S Corporation Target and the S Corporation Shareholders to properly execute the agreement referenced in § 1.336-2(h)(3)(i) (together, "the Election"). The material information submitted is summarized below.

Immediately prior to the Stock Transaction, Purchaser was a State A limited liability company that was taxed as a partnership. Purchaser owned a disregarded entity, which in turn owned a disregarded entity. The latter entity wholly owned Corporation, a State A corporation.

On Date 1, Purchaser acquired all of the stock of S Corporation Target, an S corporation incorporated in State B, from the S Corporation Target Shareholders by Corporation merging into S Corporation Target in the Stock Transaction. It has been represented that the Stock Transaction qualified as a "qualified stock disposition" as defined in § 1.336-1(b)(6)(i).

Subsequent to the Stock Transaction, a decision was made to file a section 336(e) election for the Stock Transaction. Accordingly, S Corporation Target and the S Corporation Target Shareholders entered into a written, binding agreement (the "agreement") that provided that a § 336(e) election would be made with respect to the Stock Transaction, and S Corporation Target filed its tax return for Year 1 (along with a section 336(e) election statement) on what it believed was a timely basis. However, for

various reasons, the agreement was not timely executed, the section 336(e) election statement was not correctly executed, and S Corporation Target's tax return for Year 1 was not timely filed. Subsequently, this request was submitted, under § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to file the Election. It has been represented that none of the S Corporation Target Shareholders, S Corporation Target, or Purchaser is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.

Regulations promulgated under § 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 § 336(e) election is made.

Section 1.336-2(h)(3) provides that a § 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 § 336(e) election; (ii) the S corporation target retaining a copy of the written agreement; and (iii) the S corporation target attaching the § 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 is fixed by the regulations (*i.e.*, § 1.336-2(h)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time to file the 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 would not prejudice the interests of the government.

Information, affidavits, and representations submitted by S Corporation Target, the S Corporation Target Shareholders, Purchaser, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure 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 S Corporation Target, the S Corporation Target Shareholders, and Purchaser have shown that they 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 file the Election with respect to the Stock Transaction.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, S Corporation Target must execute a new section 336(e) election statement in accordance with §§ 1.336-2(h)(5) and (6). The new election statement must then be attached to an amended tax return that S Corporation Target must file (within the same 45-day period) for Year 1. A copy of this letter ruling must also be attached to the amended return. Alternatively, if S Corporation Target files the amended return electronically, it may satisfy the requirement of attaching a copy of this letter to the amended return by attaching a statement to the return that provides the date and control number (PLR-114547-16) of this letter ruling.

In addition, 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 Stock Transaction consistently with the making of a § 336(e) election for Year 1 (and for any other affected taxable year).

The above extension of time is conditioned on the taxpayers' (*i.e.*, S Corporation Target's, the S Corporation Target Shareholders', and Purchaser's) tax liability (if any) being not lower, in the aggregate, for all years to which the § 336(e) election applies than it would have been if the Election had been timely filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the year(s) 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 Stock Transaction qualifies as a "qualified stock disposition" or (2) any other tax consequences arising from the § 336(e) election.

In addition, we express no opinion as to the tax consequences of filing S Corporation Target's tax return for Year 1 and/or the 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 that return and/or the 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. However, the Director should verify all essential facts. In addition, notwithstanding that an extension of time is granted under § 301.9100-3 to timely file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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