

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-120708-17

Date:
November 02, 2017

Legend

Taxpayer =

Corporation =

Date 1 =

Tax Professional =

Dear :

This letter responds to a letter dated June 30, 2017, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayer is requesting an extension to file the statement required by § 1.302-4(a) of the Income Tax Regulations ("Election") to waive family attribution under section 302(c)(2) with respect to a redemption of Corporation's shares on Date 1. Additional material was submitted in a letter dated October 24, 2017. The material information submitted is summarized below.

Taxpayer is a domestic individual. For federal income tax purposes, Taxpayer is treated as the owner of stock of Corporation held by a grantor trust (Taxpayer's Trust). Members of Taxpayer's family also directly own stock of Corporation or are treated as

owning Corporation stock held by separate trusts. On Date 1, all of Taxpayer's Trust's Corporation stock was redeemed for a combination of cash and promissory notes.

In order to qualify the redemption as a complete termination of Taxpayer's interest in Corporation under section 302(b)(3), Taxpayer intended to file the Election, but for various reasons, a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. It has been represented that Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Section 302(a) provides that if a corporation redeems its stock and paragraph (1), (2), (3), (4), or (5) of section 302(b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock. Section 302(b)(3) provides that a complete redemption of all of the stock owned by a shareholder will be treated as a distribution in part or full payment in exchange for the stock under section 302(a).

Section 302(c)(1) provides that, for the purposes of section 302, the attribution rules of section 318 generally apply. Generally, section 318(a)(2)(B)(i) provides that stock owned, directly or indirectly, by or for a trust is considered as owned by its beneficiaries in proportion to their actuarial interests in the trust. Section 318(a)(2)(B)(ii) provides that stock owned, directly or indirectly, by or for any portion of a grantor trust of which a person is considered the owner under subpart E of part I of subchapter J is treated as owned by the person.

Under section 318(a)(1)(A), an individual is considered to own stock owned, directly or indirectly, by or for his spouse, children, grandchildren, and parents. Section 302(c)(2) provides that section 318(a)(1) shall not apply in determining whether a redemption is a complete termination of interest as described in section 302(b)(3) if (1) immediately after the distribution the distributee has no interest in the corporation, other than as a creditor; (2) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution; and (3) the distributee, at such time and in such manner as the Secretary by regulations prescribes, files an agreement to notify the Secretary of any acquisition of any such interest and to retain necessary records.

Section 1.302-4(a) of the Income Tax Regulations prescribes such time and manner. Generally, the distributee must provide a statement in which the distributee must represent that (1) the distributee (or related person) has not acquired, other than by bequest or inheritance, any interest in the corporation (as described in section 302(c)(2)(A)(i)) since the distribution, and (2) the distributee (or related person) will notify the Internal Revenue Service of any acquisition, other than by bequest or inheritance, of such an interest in the corporation within 30 days after the acquisition, if the acquisition occurs within 10 years from the date of the distribution. The distributee

must include such statement on or with the distributee's first return for the taxable year in which the distribution described in section 302(b)(3) occurs. § 1.302-4(a).

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. § 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. § 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.302-4(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer shows it 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 Taxpayer and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, a valid election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer has shown it 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 sixty (60) days from the date on this letter, for Taxpayer to file the Election with respect to the redemption of Corporation's shares on Date 1. Taxpayer must amend its tax return for the tax year including Date 1 to attach the election statement to Taxpayer's tax return. Taxpayer must also attach a copy of this letter to such return. Alternatively, if Taxpayer files its return electronically, it may satisfy this latter requirement by attaching a statement to its return for the tax year including Date 1 that provides the date on and control number (PLR-120708-17) of this ruling.

The above extension of time is conditioned on Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies than it would have

bene if the Election had been timely filed (taking into account the time value of money). No opinion is expressed as to Taxpayer's tax liability 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 with respect to whether, in fact, Taxpayer qualifies substantively to file the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing 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 Taxpayer and Tax Professional. However, the director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the election, penalties and interest that otherwise would 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.

In accordance with the Power of Attorney on file with 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)

cc: