

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:3

PLR-121918-17

Date:

November 27, 2017

Attn:

Legend

S Corporation Target =

Shareholder A =

Shareholder B =

Purchaser A =

Purchaser B =

Trust =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

JJ =

kk =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter from your authorized representative, dated July 14, 2017, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Shareholder A, Shareholder B, Purchaser A, Purchaser B, 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 (the "Election Statement") with respect to Purchaser A's and Purchaser B's acquisition of the stock of S Corporation Target on Date 2. Additional information was submitted in a letter dated August 14, 2017. The material information submitted is summarized below.

Prior to Date 1, Shareholder A owned all aa shares of the only class of stock of S Corporation Target outstanding. On Date 1, the stock of S Corporation Target was recapitalized into two classes of common stock, Class A voting and Class B non-voting, and the aa shares were converted into bb shares of Class A stock and cc shares of Class B stock. Subsequently, between Date 1 and Date 2, Shareholder A transferred a portion of the Class B stock to Trust. It has been represented that under the "grantor trust" provisions of the Internal Revenue Code, Shareholder A continued to be treated as the owner of the stock held by Trust. Accordingly, for purposes of this letter, the transfer of the stock to Trust will be disregarded and any transaction between Shareholder A and Trust will be disregarded and any transfer of the stock by Trust to Shareholder B will be treated as if made by Shareholder A.

On Date 2, Shareholder A (and Trust) transferred dd shares of the Class B stock to Shareholder B. It has been represented that for federal income tax purposes, this transfer will be treated as if Shareholder A transferred the dd shares to S Corporation Target which then transferred the dd shares to Shareholder B.

Also on Date 2, pursuant to a stock purchase agreement of the same date: Shareholder A sold ee shares of Class A stock and ff shares of Class B stock to Purchaser A; Shareholder A sold ee shares of Class A stock and gg shares of Class B stock to Purchaser B; and Shareholder B sold all of Shareholder B's dd shares to Purchaser B. Immediately after these sales, the shares of S Corporation Target were recapitalized into a single class of common stock, resulting in Purchaser A owning hh shares (ee + ff) of S Corporation Target and Purchaser B owning the remaining ii shares (ee + gg + dd). Immediately following this recapitalization, Shareholder B purchased JJ shares of the stock of S Corporation Target from Purchaser A and kk shares from Purchaser B (the sum of JJ and kk is no greater than 20 percent of the outstanding stock of S Corporation Target. It has been represented that the Date 2 transactions qualified as a “qualified stock disposition” as defined in § 1.336-1(b)(6).

Pursuant to the stock purchase agreement, of which Shareholder A, Shareholder B, Purchaser A, Purchaser B, and S Corporation Target were all parties, a section 336(e) election was required to be made. The Election Statement, required as part of the section 336(e) election, was required to be filed by the due date (with extensions) of the S Corporation Target tax return for the tax year that included Date 2. However, for various reasons, the Election Statement was not timely filed. Subsequently, a 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 Shareholder A, Shareholder B, Purchaser A, Purchaser B, or S Corporation Target is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time of the request for relief.

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 1.336-1(b)(5)(v) provides, in part, that stock disposed of by an S corporation shareholder to another person under § 1.336-1 that is reacquired by the S corporation shareholder or by a person related (within the meaning of § 1.336-1(b)(12)) to the S corporation shareholder during the 12-month disposition period shall not be considered as disposed of.

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 Shareholder A, Shareholder B, Purchaser A, Purchaser B, 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 will not prejudice the interests of the government.

Information, affidavits, and representations submitted Shareholder A, Shareholder B, Purchaser A, Purchaser B, S Corporation Target, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the parties reasonably relied on a qualified tax professional who failed to timely file, or to advise them to timely file, the Election Statement, and 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) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Shareholder A, Shareholder B, Purchaser A, Purchaser B, 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, 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 Date 2 transactions.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, S Corporation Target must file or amend its tax return for the tax year that includes Date 2 and must attach the Election Statement and a copy of this ruling letter to such return. Alternatively, if S Corporation Target files its return electronically, in lieu of attaching a copy of this ruling letter to the return, S Corporation Target may attach a statement to the return that provides the date on, and the control number of, this ruling letter (November 27, 2017; PLR-121918-17).

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 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 the taxpayers' (i.e., Shareholder A, Shareholder B, Purchaser A, Purchaser B, and S Corporation Target's) 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 whether Shareholder A should properly be treated for federal tax purposes as the owner of any property held by Trust. We express no opinion whether the transfer by Shareholder A of dd shares of the Class B stock to Shareholder B should be treated as if Shareholder A transferred the dd shares to S Corporation Target which then transferred the dd shares to Shareholder B. We express no opinion regarding the proper treatment of the Date 2 transactions, as to whether the Date 2 transactions qualify as a "qualified stock disposition", or of any tax consequences arising from the section 336(e) election. We also express and imply no opinion regarding the application of sections 83, 409A, 404 or other provision to the pre-sale transfer by Shareholder A to Shareholder B.

Lastly, we express no opinion as to the tax consequences of filing the Election Statement or return 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, in 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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