

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-110236-19
Date:
October 16, 2019

Legend

Holdco =

Direct Purchaser =

S Corporation Target =

Shareholder =

Date 1 =

Tax Professionals =

Dear :

This letter responds to a letter dated April 30, 2019, submitted on behalf of Holdco, Direct Purchaser, S Corporation Target, and Shareholder (collectively, the "Parties"),

requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. The Parties are requesting an extension of time to properly execute the agreement referenced in §1.336-2(h)(3)(i) of the Income Tax Regulations (the "Agreement") and to file the election statement under §1.336-2(h)(3)(iii) (the "Election Statement") with respect to Direct Purchaser's acquisition of all of the stock of S Corporation from Shareholder on Date 1. Additional material was submitted subsequently. The material information is summarized below.

On Date 1, Direct Purchaser, an entity disregarded as separate from its owner, Holdco, for Federal income tax purposes, acquired all of the stock of S Corporation Target from Shareholder in exchange for cash (the "Disposition"). It has been represented that the Disposition qualified as a "qualified stock disposition" as defined in §1.336-1(b)(6).

The Parties intended for the Disposition to be treated as an asset sale, but for various reasons, a timely election was not made. Subsequently, this request was submitted under §301.9100-3, for an extension of time to enter into the Agreement and file the Election Statement. The Parties represent that they are not seeking to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time of the request.

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: (1) all of the S corporation shareholders, including those who did 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 366(e) election; (2) the S corporation target retaining a copy of the written agreement; and (3) 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 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 (the "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 entering into the Agreement and filing the Election Statement 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 Agreement and to file the Election Statement, 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 the Parties and Tax Professionals explain the circumstances that resulted in the failure to timely enter into the Agreement and file the Election Statement. The information establishes that the request was filed before the failure to timely enter into the Agreement and file the Election Statement was discovered by the Internal Revenue Service, and the Parties reasonably relied on a qualified tax professional who failed to advise them to timely enter into the Agreement and to timely file the Election Statement. See §301.9100-3(b)(1)(i) and (v).

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 45 days from the date on this letter, to enter into the Agreement and file the Election Statement.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, S Corporation Target and Shareholder (1) must enter into a written, binding agreement in accordance with §1.336-2(h)(3)(i) to make the section 336(e) election; and (2) S Corporation Target must file the Election Statement in accordance with §1.336-2(h)(3)(iii). The Election Statement 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 this letter and control number (PLR-110236-19) of this letter ruling.

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., the Parties') 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 Agreement had been timely entered into and 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 opinions as to: (1) whether the Disposition qualifies as a "qualified stock disposition"; 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 making the section 336(e) 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 the section 336(e) 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 and Tax Professionals. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the section 336(e) election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter 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,

T. Ian Russell

T. Ian Russell
Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)