

## 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:4

PLR-126678-18

Date:

March 05, 2019

### Legend

Old Target =

New Target =

Purchaser =

Selling Shareholders =

Date 1 =

Tax Professional =

Company Official =

Dear \_\_\_\_\_ :

This letter ruling responds to a letter dated October 8, 2018, from your authorized representative, submitted on behalf of New Target, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. New Target, as successor to Old Target, is requesting an extension of time to file the election statement under § 1.336-2(h)(3)(iii) ("Election Statement") with respect to Purchaser's acquisition of all the stock of Old Target on Date 1 from Selling Shareholders. Additional information was submitted in letters dated November 28, 2018 and February 13, 2019. The material information submitted for consideration is summarized below.

On Date 1, Purchaser, an entity taxable as a partnership for Federal income tax purposes, acquired all the stock of Old Target, as S corporation, from Selling Shareholders in exchange for valuable consideration (the "Disposition"). Old Target, and Selling Shareholders entered into a written, binding agreement to treat the stock sale as an asset sale pursuant to § 336(e) of the Internal Revenue Code. Immediately after acquiring Old Target, Purchaser converted Old Target into New Target through the use of state law conversion statutes.

The Election Statement was required to be filed with Old Target's Federal income tax return for the taxable year that included the Disposition, by the due date of such return. However, for various reasons, the Election Statement was not timely filed. Subsequently this request was submitted under § 301.9100-3 for an extension of time to file the Election Statement. Old Target (by its successor, New Target), Purchaser, and Selling Shareholders have represented that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time this relief was requested. It has been further represented that the Disposition qualified as a qualified stock disposition as defined in § 1.336-1(b)(6).

Regulations promulgated under § 336(e) permit certain sales, exchanges, or distributions of stock of a corporation to be treated as an asset disposition if: (1) the stock 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. 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.

The time for filing the Election Statement is fixed by the regulations (§ 1.336-2(h)(3)(iii)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time to file the Election Statement, provided the taxpayers 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 interest of the government.

Information, affidavits, and representations submitted by New Target, Purchaser, Selling Shareholders, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election Statement. The information establishes that the taxpayers reasonably relied on a qualified tax professional who failed to file, or advise them to timely file, the Election Statement, and that the request for relief was filed before the failure to timely file the Election Statement was discovered by the Internal Revenue Service. Sections 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that the taxpayers have shown they acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for New Target to file the Election Statement with respect to the Disposition.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, New Target, as successor to Old Target, must file the Election Statement in accordance with § 1.336-2(h). The Election Statement must be attached to Old Target's tax return for the taxable year that includes Date 1. In addition, a copy of this letter must be attached to Old Target's tax return. Alternatively, if the Old Target return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to

the return that provides the date on and control number (PLR-126678-18) 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 § 336(e) 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 New Target, Old Target, Purchaser, and Selling Shareholders' tax liabilities (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 Statement had been timely filed (taking into account the time value of money). No opinion is expressed as to their 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 disposition" under § 1.336-1(b)(6); 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 the return or the Election Statement late under the provisions of any other sections 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 New Target, Purchaser, Selling Shareholders, Company Official, 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 Statement, penalties and interest that would otherwise 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: