

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:2

PLR-103782-18

Date:

July 26, 2018

Legend

S Corporation =

LLC =

Shareholders =

Purchaser =

Regarded Owner =

Securities Agreement =

State A =

Date 1 =

Date 2 =

Company Officials =

Dear :

This letter responds to a letter dated January 16, 2018, as modified by a letter dated July 3, 2018, submitted on behalf of LLC, as successor of S Corporation, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Regarded Owner, LLC, and Shareholders 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 file the election statement under § 1.336-2(h)(3)(iii) (the "Election Statement") with respect to Regarded Owner's (through Purchaser) acquisition of all of the stock of S Corporation from Shareholders on Date 1. Additional material was submitted in letters dated April 23, 2018, May 29, 2018, and July 3, 2018. The material information submitted is summarized below.

On Date 1, pursuant to Securities Agreement, Purchaser, a disregarded entity for federal income tax purposes whose regarded owner is Regarded Owner, acquired all of the stock of S Corporation, a State A corporation, from Shareholders (the "Disposition"). It has been represented that the Disposition qualified as a "qualified stock disposition" as defined in § 1.336-1(b)(6). On Date 2, S Corporation converted to LLC under the laws of State A. LLC is a disregarded entity for federal income tax purposes, whose sole owner, for federal income tax purposes, is Regarded Owner.

The Securities Agreement provided that a section 336(e) election would be made with respect to the Disposition. However, S Corporation was not a party to the Agreement nor was the Election Statement timely filed and, consequently, a timely section 336(e) election was not made. This request was submitted, under § 301.9100-3, for an extension of time to enter into the Agreement and file the Election Statement. Regarded Owner, S Corporation (by LLC) and Shareholders each 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 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: (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 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 Regarded Owner, LLC, Shareholders, and Company Officials explain the circumstances that resulted in the failure to timely enter into the Agreement and file the Election Statement. The information establishes the request for relief was filed before the failure to timely enter into the Agreement and file the Election Statement 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 the taxpayers 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, (a) LLC, as successor of S Corporation, and Shareholders must enter into a written, binding agreement to make the section 336(e) election, and (b) LLC, as successor of S Corporation, must file the Election Statement in accordance with § 1.336-2(h)(3)(iii). The Election Statement must be attached to S Corporation's tax return for the taxable year including Date 1. In

addition, a copy of this letter must be attached to S Corporation's return. Alternatively, if S Corporation's return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement that provides the date and control number (PLR-103782-18) on this letter.

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 all relevant parties' tax liability (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 parties' 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 as to whether the Disposition qualifies as a "qualified stock disposition" or 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) 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 Regarded Owner, LLC, Shareholders, and Company Officials. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to enter into the Agreement and file the Election Statement, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) 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
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)