

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-101414-19

Date:

July 09, 2019

Legend

Parent =

Seller =

Target =

Purchaser =

Date 1 =

Parent Officer =

Tax Professionals =

Dear _____ :

This letter responds to a letter dated December 21, 2018, submitted on behalf of Parent, the common parent of a consolidated group that included Seller and Target through Date 1 (the "Parent Group"), requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to make an election.

Parent, Seller and Target are requesting an extension of time to properly execute the agreement referenced in §1.336-2(h)(1)(i) of the Income Tax Regulations (the "Agreement") and file the election statement under §1.336-2(h)(1)(iii) (the "Election Statement") with respect to Seller's disposition of all of the outstanding stock of Target on Date 1. Additional material was subsequently submitted on behalf of Parent, Seller, Target, and Purchaser (collectively, the "Parties"). The material information submitted is summarized below.

Pursuant to a stock purchase agreement between Seller and Purchaser dated Date 1 (the "SPA"), Seller disposed of all of the outstanding stock of Target on Date 1 (the "Disposition"). Parent has represented that the Disposition constituted a "qualified stock disposition" within the meaning of §1.336-1(b)(6).

The SPA provided that a section 336(e) election would be made with respect to the Disposition. However, Target was not a party to the SPA 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, and otherwise fully satisfy §1.336-2(h)(1). Each of the Parties has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Regulations promulgated under section 336(e) permit certain sales, exchanges, or distributions of stock of a corporation to be treated as asset dispositions if (i) the disposition is a "qualified stock disposition" as defined in §1.336-1(b)(6); and (ii) a section 336(e) election is made.

Section 1.336-2(h)(1) provides that if the seller and target corporations are members of the same consolidated group, a section 336(e) election is made by completing the following requirements: (i) seller and target must enter into a written, binding agreement, on or before the due date (including extensions) of the consolidated group's consolidated federal income tax return for the taxable year that includes the disposition date, to make a section 336(e) election; (ii) the common parent of the consolidated group must retain a copy of the written agreement; (iii) the common parent must attach the section 336(e) election statement, described in §1.336-2(h)(5) and (6), to the group's timely filed (including extensions) consolidated federal income tax return for the taxable year that includes the disposition date; and (iv) the common parent must provide a copy of the section 336(e) election statement to target on or before the due

date (including extensions) of the consolidated group's consolidated federal income tax return.

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 making a section 336(e) election, including entering into the Agreement and filing the Election Statement, is fixed by the regulations (i.e., §1.336-2(h)(1)). 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, Parent Officer, 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 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 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: (a) Seller and Target must enter into a written, binding agreement to make a section 336(e) election with respect to the Disposition, and Parent must retain a copy of this agreement, (b) Parent must attach the section 336(e) election statement to the Parent Group's consolidated federal income tax return for the taxable year that includes Date 1, (c) Parent must attach a copy of this letter to the Parent Group's consolidated federal income tax return for the taxable year that includes Date 1 (if this return was filed electronically, Parent may instead attach a

statement that provides the date and control number (PLR-101414-19) on this letter), and (d) Parent must provide a copy of the section 336(e) election statement to Target.

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 Disposition 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 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 Parties' 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," or (2) any other tax consequences relating to the Disposition or arising from the section 336(e) election.

In addition, we express no opinion as to the tax consequences of 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, making 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, Parent Officer, and Tax Professionals. 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 ruling 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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