

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
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Date:
June 01, 2015

Legend

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to a letter dated December 15, 2014 and subsequent correspondence submitted on behalf of X by its authorized representatives, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code).

FACTS

The information submitted discloses that X was incorporated under the laws of State on Date 1 and timely elected to be treated as an S corporation, effective on that same date. Y was incorporated under the laws of State on Date 2 and timely elected to be treated as an S corporation, effective on that same date. As of Date 3, X acquired all of the stock of Y. X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election.

LAW

Section 1361(b)(3)(A) of the Code provides that except as provided in regulations prescribed by the Secretary, for purposes of Title 26, a corporation which is a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in § 1361(b)(2), if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. Section 1.1361-3(a)(2) provides that an S corporation makes a QSub election with respect to a subsidiary by filing a Form 8869 with the appropriate service center. Section § 1.1361-3(a)(4) provides that a QSub election will be effective on the date specified on the Form 8869 or on the date the form is filed if no date is specified. The effective date cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in

§ 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of § 301.9100-3 with respect to the QSub election for Y. Accordingly, X is granted an extension of time of 120 days from the date of this letter to elect to treat Y as a QSub, effective Date 3. The election should be made for Y by filing a properly executed Form 8869 with the appropriate service center, with a copy of this letter attached.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X is a valid S corporation or whether Y is eligible to be a QSub. Further, we express or imply no opinion as to state tax consequences of this ruling.

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, we are sending a copy of this letter to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel (Passthroughs
& Special Industries)

Holly Porter
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for §6110 purposes

cc: