

## Internal Revenue Service

Number: **201544022**

Release Date: 10/30/2015

Index Numbers: 1361.05-00, 7701.00-00  
9100.00-00, 9100.31-00

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:PSI:B3  
PLR-119929-15

Date:  
July 27, 2015

X =

Y =

Z =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This letter responds to a letter we received on June 11, 2015, submitted on behalf of X and Z by their authorized representatives, requesting relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations for X to be granted an extension of time to elect to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code, for X to be granted an extension of time under § 301.9100-3 to elect to treat Y as a disregarded entity under § 301.7701-3(c)(1), and for Z to be granted an extension of time under § 301.9100-3 to elect to treat Y as an association taxable as a corporation under § 301.7701-3(c)(1)(iv).

### Facts

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be an S corporation effective Date 1. A and B were the sole shareholders of X. On Date 2, Y was formed as a State limited liability company by A and B and elected to be an S corporation effective Date 3. On Date 4, A and B contributed their interests in Y to X. As of Date 4, X owned 100% of Y's stock. X represents that it intended to elect to treat Y as a QSub effective Date 5. However, due to inadvertence, X did not timely file a Form 8869, Qualified Subchapter S Subsidiary Election, on behalf of Y. On Date 6, Z acquired 100% of the assets of X. X represents that as of Date 6, Y had an ownership change that would satisfy § 301.7701-3(c)(1)(iv). It is represented that X and its shareholders have treated X as an S corporation from Date 1 through Date 7, and the owners of Y have treated Y consistent with the rulings contained in this letter.

### Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of this title (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) 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) provides that, for purposes of § 1361(b)(3)(B), the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)) if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1.1361-3(a) of the Income Tax Regulations prescribes the time and manner for making an election to be classified as a QSub. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a QSub may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified Subchapter S Subsidiary.

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(i) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (A) a partnership if it has two or more members; or (B) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If

an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

Section 301.7701-3(c)(1)(iv) provides that if an eligible entity makes an election under § 301.7701-3(c)(1)(i) to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion 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 Internal Revenue Code (Code), except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting 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 subject to § 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 upon the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of one hundred twenty (120) days from the date of this letter to file Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center to elect to treat Y as a QSub effective Date 5. A copy of this letter should be attached to the Form 8869.

In addition, we grant X and Z an extension of time of one hundred twenty (120) days from the date of this letter to file Forms 8832, Entity Classification Election, with the appropriate service center(s) to elect that Y be classified as a disregarded entity

effective Date 7 and as an association taxable as a corporation effective Date 8, respectively. A copy of this letter should be attached to the Forms 8832.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X otherwise qualifies as a small business corporation under § 1361, or whether Y otherwise meets the definition of a QSub under § 1361(b)(3)(B). In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited for precedent.

Pursuant to a power of attorney on file, we are sending a copy of this letter to X and Z's authorized representatives.

The rulings contained in this letter are 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 rulings requested, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By: \_\_\_\_\_  
Bradford R. Poston  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for §6110 purposes

cc: