

Internal Revenue Service

Number: **201633003**

Release Date: 8/12/2016

Index Number: 1361.05-00, 9100.00-00

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:B01

PLR-104096-16

Date:

April 29, 2016

X =

Y =

State A =

State B =

D1 =

D2 =

D3 =

Dear :

This responds to the letter dated January 20, 2016, and other information, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code).

Facts

The information submitted states that X was incorporated under the laws of State A on D1 and timely elected to be treated as an S corporation, effective on that same date. Y was incorporated under the laws of State B on D2 and timely elected to be treated as an S corporation, effective on that same day. X acquired 100% of the stock of Y as of D3 and represents that it intended to elect to treat Y, as a Qualified Subchapter

S Subsidiary (QSub) effective D3. However due to inadvertence, Y failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election. X represents that both it and Y have filed tax returns and reported tax items consistent with the tax treatment of Y as a QSub for all relevant years since D3.

Law and Analysis

Section 1361(b)(3)(A) provides that 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 a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a qualified subchapter S subsidiary.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner for making a QSub election. A taxpayer 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 cannot be effective more than two months and 15 days prior to 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 to make a regulatory election, or a statutory election (but no 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 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and that (2) granting relief will not prejudice the interests of the Government.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. 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 D3. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X is, in fact, an S corporation, or whether Y is eligible to be a QSub.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: David R. Haglund
David R. Haglund
Branch Chief, Branch 1
(Passthroughs & Special Industries)

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