

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-103926-16
Date: 5/09/2016

Legend

X =

Y =

State =

D1 =

Dear :

This responds to the letter dated January 25, 2016, and other information, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

Facts

According to the information submitted, X, incorporated in State, elected to become an S Corporation effective D1. X represents that it intended for Y to be treated as a qualified subchapter S subsidiary (QSub), effective D1. However, due to inadvertence, Y failed to timely file Form 8869, Qualified Subchapter Subsidiary Election. X represents that both it and Y have filed tax returns and reported all tax items consistent with the tax treatment of Y as a QSub for all relevant years since D1.

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 QSub.

Section 1362(a) provides that a small business corporation may elect, in accordance with the provisions of this section, to be an S corporation and that an election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(f) provides that a corporation shall be treated as an S corporation or a QSub (as the case may be) by the Secretary if 1) an election under subsection (a) or § 1361(b)(3)(B)(ii) by any corporation was not effective for the taxable year for which it was made due to a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or was terminated under paragraph (2) or (3) of subsection (d) or § 1361(b)(3)(C), 2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, 3) steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub (as the case may be) or to acquire the required shareholder consents, and 4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments as may be required by the Secretary with respect to such period.

Section 1.1362-4(a) provides that the Commissioner will treat a corporation as continuing to be an S corporation or a QSub or an invalid election to be either an S corporation or QSub as valid if 1) the corporation made a valid election under § 1362(a) or § 1361(b)(3) and the election terminated or the corporation made an invalid election under § 1362(a) or § 1361(b)(3), 2) the Commissioner determines that the termination or invalidity was inadvertent, 3) steps were taken, within a reasonable period after discovery of the terminating event or invalid election, to make the corporation for which the election was made or the termination occurred into a small business corporation or QSub (as the case may be), or to acquire the required shareholder consents, and 4) the corporation and shareholders agree to adjustments that the Commissioner may require for the period.

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 the procedures applicable under §§ 301.9100-1 and 301.9100-3 of this chapter.

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 and 1362(f) 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 D1. 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: Laura Fields
Laura Fields
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

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

cc: