

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201634006**
Release Date: 8/19/2016

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Index Number: 1361.01-04, 1361.05-00,
1362.01-00, 9100.00-00

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-107138-16
Date:
May 23, 2016

LEGEND

X =

Y =

State =

Date1 =

Date2 =

Dear :

This responds to a letter dated March 1, 2016, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 to make a late entity classification election to be treated as an association taxable as a corporation for federal income tax purposes, and to make a late election to be a qualified subchapter S subsidiary ("QSub") under § 1361(b)(3)(B)(ii) of the Internal Revenue Code ("Code") and § 1.1361-3 of the Income Tax Regulations.

The information submitted states that X is a limited liability company that was formed under the laws of State on Date1. Since the date of formation of X, Y, a State corporation, has been the sole owner of X. Prior to the formation of X, Y had elected to

be treated as an S corporation within the meaning of § 1361(a) of the Code. Y had formed X with the intention that X would be operated as a wholly-owned subsidiary of Y. In addition, Y had intended to elect to treat X as an association taxable as a corporation for federal tax purposes, and as a QSub effective as of Date1. However, due to inadvertence, Y failed to timely file Form 8832, Entity Classification Election, and Form 8869, Qualified Subchapter S Subsidiary Election, on behalf of X to be effective Date1. Instead, on Date2, X erroneously filed a Form 2553 to be treated as an S corporation effective Date1. X's S corporation election was ineffective due to the fact that X had an ineligible shareholder, Y.

X represents that X and Y have filed tax returns for all of the relevant tax years consistent with the income tax treatment of X as a qualified subchapter S subsidiary from Date1.

Section 1361(b)(3)(A) of the Internal Revenue Code (Code) 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 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.

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 301.7701-3(a) provides 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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

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

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

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 the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and that (2) the grant of relief will not prejudice the interests of the Government.

Based solely upon the information submitted and the representations made, we conclude that the requirements of § 301.9100 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to file Form 8832, Entity Classification Election, with the appropriate service center to elect to be classified as an association taxable as a corporation effective Date1. In addition, X is granted an extension of time of 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 be treated as a QSub effective Date1. A copy of this letter should be attached to each of Form 8832 and Form 8869. Copies are enclosed for that purpose.

Except for the specific rulings above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Internal Revenue Code. Specifically, we express no opinion regarding whether X meets the definition of a QSub under § 1361(b)(3)(B).

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (3)
Copies of this letter
Copy for § 6110 purposes

cc: