

Internal Revenue Service

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September 19, 2016

Legend

X =

Y =

Z =

A =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Dear :

This letter responds to a letter dated March 31, 2016, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that Y was incorporated under the laws of State on Date1. X was incorporated under the laws of State on Date2. A was the sole shareholder of X and Y. X and Y each elected to be treated as an S corporation effective Date3. A transferred A's shares in Y to X on Date4. X elected to treat Y as a qualified subchapter S subsidiary (QSub) effective Date4. On Date5, as part of a reorganization, shares of Y were issued to Z, a corporation wholly owned by A, causing Y's QSub election to terminate because it had more than one owner. Z distributed these shares to A as part of the same reorganization. Upon discovering the error, A transferred these shares of Y to X on Date6.

X represents that there was no tax avoidance or retroactive tax planning involved in the transfer of shares of Y to Z, A, or X. In addition, X and its shareholder agree to make any adjustments consistent with the treatment of X as an S corporation and Y as a QSub as may be required by the Secretary. X also represents that X and its shareholder have filed consistently with X's status as an S corporation and Y's status as a QSub.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code 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) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) 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, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

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 "qualified subchapter S subsidiary" 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 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents; (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made 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, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agree to make the adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Y's QSub election was terminated on Date5 and that the termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that Y will be treated as an S corporation from Date5 and thereafter provided that Y's QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

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 is a valid S corporation and Y is otherwise 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,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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