

Internal Revenue Service

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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-105938-17

PLR-105942-17

Date:

August 21, 2017

X =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This letter responds to a letter dated February 13, 2017, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code and an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Sub 3 as a qualified subchapter S subsidiary (QSub).

Facts

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation effective Date 2.

X acquired 100 percent of the stock of Sub 1 and Sub 2 on Date 3. As of Date 3, Sub 1 owned 100 percent of the stock of Sub 3 and Sub 4. X timely elected to treat Sub 1, Sub 2, and Sub 4 as QSubs; however, due to inadvertence, these elections were ineffective. Additionally, Sub 5 was incorporated on Date 4 and at all times has been 100 percent owned by Sub 1. X also timely elected to treat Sub 5 as a QSub, effective Date 4; however, this election was also ineffective.

Additionally, X represents that, at all times on and after Date 3, X has owned all of the outstanding stock of Sub 1 and Sub 1 has owned all the outstanding stock of Sub 3. X intended for Sub 3 to be treated as a QSub, effective Date 3. However, due to inadvertence, X failed to file Form 8869, Qualified Subchapter S Subsidiary Election (Form 8869).

X represents that the circumstances resulting in the ineffectiveness of X's QSub elections were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that at all times since Date 2, X and its shareholders have filed federal income tax returns consistent with X having a valid S corporation election in effect. X also represents that at all times since Date 3, X and its shareholders have filed federal income tax returns consistent with Sub 1, Sub 2, Sub 3, and Sub 4 as having valid QSub elections in effect and since Date 4 with Sub 5 as having a valid QSub election in effect.

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 QSub as a domestic corporation, which is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

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 Form 8869 with the appropriate service center 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.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the tax 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, or (B) was terminated under paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 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 on the facts submitted and representations made, we conclude that X's elections to treat Sub 1, Sub 2, Sub 4, and Sub 5 were ineffective. We also conclude that the circumstances resulting in the ineffectiveness of X's QSub elections for Sub 1, Sub 2, Sub 4, and Sub 5 were inadvertent within the meaning of § 1362(f). Accordingly, Sub 1, Sub 2 and Sub 4 will be treated as a QSubs effective Date 3 and thereafter and Sub 5 will be treated as a QSub effective Date 4 and thereafter, provided Sub 1, Sub 2, Sub 4, and Sub 5 are otherwise eligible to be treated as QSubs.

In addition, we conclude that X has satisfied the requirements of § 301.9100-3 with respect to a late QSub election for Sub 3. As a result, provided that X makes a QSub election for Sub 3 by filing a completed Form 8869, effective Date 3, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made, effective Date 3.

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 was otherwise eligible to be an S corporation and whether Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 were otherwise valid QSubs.

With regard to any defective consents to X's S corporation election, we suggest you attempt to perfect such consents through the procedure described in § 1.1362-6(b)(iii).

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

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

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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