

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
March 06, 2018

LEGEND

X =

Y =

A =

B =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

State1 =

State2 =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

Date9 =

Date10 =

N1 =

N2 =

N3 =

N4 =

Dear _____ :

This responds to a letter dated September 14, 2017, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code (the Code), and an extension of time under 301.9100-3 to make late election to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B)(ii) of the Code and § 1.1361-3 of the Income Tax Regulations.

The information submitted states that X was incorporated under the laws of State1 on Date1. X elected to be taxed as an S corporation effective on Date2. Y was incorporated under the laws of State2 on Date3. X has owned, and continues to own, all of the issued and outstanding shares of Y at all times since the date of Y's

incorporation. X represents that X and its shareholders always intended for X to treat Y as a QSub, and all of X's tax returns were filed consistent with this treatment from Y's date of formation. However, X failed to timely file Form 8869 to make the election to treat Y as a QSub.

A and B established Trust1 as an irrevocable trust on Date4 and transferred N1 shares of X to Trust1. A died on Date5, and B became the sole trustee and income beneficiary of Trust1. On Date6, the assets of Trust1 were divided among Trust1 (Survivor's Trust), Trust2 and Trust3. The information submitted states that Qualified Subchapter S Trust (QSST) elections were properly and timely filed on behalf of Trust2 and Trust3 effective Date6. On Date7, B formed Trust4 as a successor to Trust1. In addition, Trust4 was a revocable trust and was properly treated as a grantor trust for purposes of § 671 of the Code from Date7 until Date8, when B died. At the time of B's death, Trust2 held N2 shares of X stock, Trust3 held N3 shares of X stock, and Trust4 held N4 shares of X stock (the sum of these amounts being the total number of issued and outstanding shares of X).

According to the information submitted, Trust2, Trust3 and Trust4 continued to be eligible S corporation shareholders after the death of B on Date8, to Date9, pursuant to § 1361(c)(2)(A)(ii). X further represents that Trust2, Trust3 and Trust4 meet the requirements of § 1361(e)(1)(A) to be Electing Small Business Trusts (ESBTs), except for the fact that no ESBT elections had been timely made on behalf of Trust2, Trust3 and Trust4 between B's death on Date8 and Date10. Accordingly, the S corporation election of X terminated on Date10 because Trust2, Trust3 and Trust4 were ineligible S corporation shareholders of X beginning on that date.

X represents that X and all of X's shareholders have filed tax returns consistent with X being an S corporation and filed returns for Y as if it was an QSub since Date3. In addition, X represents that Trust2, Trust3 and Trust4 have filed tax returns consistent with their treatment as ESBTs since Date10. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation, Y as a QSub, and Trust2, Trust3 and Trust4 as ESBTs, as may be required by the Secretary.

RULINGS REQUESTED

1. X requests relief under § 1362(f) for an inadvertent termination of its S election on Date10; and
2. X requests an extension of time under § 301.9100-3 to make a late election to treat Y as a QSub effective Date3.

RULING 1

Section 1362(f) provides that if (1) an election under § 1362(a) by a corporation (A) 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 or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date10 as the result of the failure of the trustees of Trust2, Trust3 and Trust4 to make elections under § 1362(1) to treat Trust2, Trust3 and Trust4 as ESBTs effective as of that date. We further conclude that the termination of X's S corporation election on Date10 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date10 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is contingent upon the trustees of Trust2, Trust3 and Trust4 filing an ESBT election on behalf of Trust2, Trust3 and Trust4, respectively, with an effective date of Date10. These elections must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each election.

If the above condition is not met, then this letter ruling is null and void. Furthermore, if this condition is not met, X must send a notification that its S election has terminated to the service center with which X's S election was filed.

RULING 2

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 301.9100-1(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) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 the election. 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 (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. X is granted an extension of time of 120 days from the date of this letter to file Forms 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center to elect to treat Y as a QSub effective Date3. A copy of this letter should be attached to the Form 8869.

All of the rulings contained above are contingent upon X filing, as necessary or appropriate, amended federal tax returns consistent with the treatment of X as an S

corporation, Y as a QSub, and Trust2, Trust3 and Trust4 as ESBTs, for all applicable tax years, within 120 days of the date of this letter. A copy of this letter should be attached to any such returns.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation. In addition, no opinion is expressed as to whether Y is eligible to elect to be treated as a QSub. Finally, no opinion is expressed as to whether Trust2, Trust3 and Trust4 are eligible to elect to be treated as ESBTs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

Sincerely,

Bradford R. Poston
Special Counsel
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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