

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201849006**
Release Date: 12/7/2018

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1361.00-00, 1361.01-05,
1361.05-00, 1362.00-00,
1362.01-00, 1362.01-03,
1362.04-00, 9100.00-00,
9100.31-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-103888-18
Date:
August 10, 2018

Legend

X =

Y =

Trust =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated January 24, 2018, and subsequent

correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted, X and Y were incorporated under the laws of State. On Date 1, X, an S corporation, acquired all of the stock of Y. X failed to timely file Form 8869, Qualified Subchapter S Subsidiary (QSub) Election, which was intended to be effective on Date 2.

On Date 3, Trust acquired all of the stock of Y. On Date 4 Y filed Form 2553, Election by a Small Business Corporation, to elect S status for what was intended to be an S election effective on Date 3.

As part of the ruling request the following representations were made. The circumstances resulting in the ineffectiveness of Y's QSub and S corporation elections were inadvertent and were not motivated by tax avoidance or retroactive tax planning.

LAW

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, Qualified Subchapter S Subsidiary Election, 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 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not 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.

Section 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 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.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b)(1) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if: (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective Date 2 is granted. The election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to Form 8869.

Based solely on the facts submitted and representations made, we conclude that Y established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that Y is eligible for relief under § 1362(b)(5). Accordingly, if Y makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 that contains an effective date of Date 3, within 60 days following the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X or Y was or is otherwise eligible to be treated as a QSub or S corporation.

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

Pursuant to a power of attorney on file, we are sending a copy of this letter to the designated authorized representatives.

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.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: