

**Internal Revenue Service**

Number: **202127032**  
Release Date: 7/9/2021

Index Number: 1361.00-00, 1361.05-00

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:03  
PLR-124554-20

Date:  
April 07, 2021

Legend

X =

Sub =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated October 23, 2020, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Sub as a qualified subchapter S subsidiary (“QSub”) under § 1361(b)(3) of the Internal Revenue Code (Code).

## FACTS

The information submitted provides that X was formed under the laws of State on Date 1, and elected to be treated as an S corporation effective Date 2. On Date 3, X acquired all of the stock of Sub. X represents that, at all times on and after Date 3, X owned all of the outstanding stock of Sub and intended to elect to treat Sub as a QSub effective Date 3. However, due to inadvertence, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub.

X represents that it has filed consistently with being an S corporation and that Sub filed consistently as a QSub since Date 3.

## LAW AND ANALYSIS

Section 1361(a) 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 the 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 75 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(b)(3)(A) generally provides that a qualified subchapter S subsidiary shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary 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 that 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 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a qualified subchapter S subsidiary election. Section 1.1361-3(a)(4) provides that an election 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 an election is Form 8869, Qualified Subchapter S Subsidiary Election.

Section 1.1361-3(a)(6) provides that an extension of time to make a qualified subchapter S subsidiary election may be available under procedures applicable under §§ 301.9100-1 and 301.9100-3.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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 Revenue Bulletin.

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 (i) the taxpayer acted reasonably and in good faith, and (ii) the grant of relief will not prejudice the interests of the Government.

### CONCLUSION

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of one hundred twenty (120) days from the date of this letter to elect to treat Sub as a QSub, effective Date 3. The election should be made by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center, and a copy of this letter should be attached to the election.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X is a valid S corporation or whether Sub is eligible to be a QSub.

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

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.

Under a Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Adrienne Mikolashek  
Branch Chief, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: