

Internal Revenue Service

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Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
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PLR-104565-21

Date:
August 26, 2021

LEGEND

X =

Sub =

State =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to a letter dated February 22, 2021, submitted on behalf of X by its authorized representatives, 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 discloses that X was formed under the laws of State and elected to be an S corporation effective Date 1. On Date 2, X formed a wholly owned limited liability company, Sub. X intended to elect to treat Sub as a QSub effective Date 2 and in furtherance of that intent filed a Form 8869, Qualified Subchapter S Subsidiary

Election. However, X discovered that its election to treat Sub as a QSub was ineffective due to Sub's failure to meet all the requirements of § 1361(b)(3)(B) at the time the election was made. Specifically, Sub was not a corporation, as defined by § 301.7701-2(b) of the Income Tax Regulations, at the time the election was made. See § 1.1361-3(a)(1). Sub has since filed a Form 8832, Entity Classification Election, pursuant to Rev. Proc. 2009-41, 2009-39 I.R.B. 439, electing to treat Sub as an association taxable as a corporation effective Date 2.

X represents that it has filed consistently with being an S corporation and that Sub has filed consistently with being a QSub since Date 2.

Law and Analysis

Section 1361(b)(3)(A) provides that except as provided in regulations prescribed by the Secretary, for purposes of Title 26, (i) a corporation that is a QSub shall not be treated as a separate corporation, and (ii) 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 the term “qualified subchapter S subsidiary” as a domestic corporation that is not an ineligible corporation (as defined in § 1361(b)(2)), 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)(1) provides that the corporation for which a QSub election is made must meet all the requirements of § 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available 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) 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 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 on the facts and representations submitted, 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 2. The election should be made for Sub by filing Form 8869 with the appropriate service center, with a copy of this letter attached.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case 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. According to § 6110(k)(3) of the Code, 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.

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,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

Laura Fields

By: _____

Laura Fields
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy of Letter

cc: