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Department of the Treasury
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Person To Contact:
, ID No.
Telephone Number:

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PLR-110066-21

Date:
October 28, 2021

LEGEND:

Sub =

X =

A =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated April 22, 2021, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a

ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that Sub, a State 1 corporation, elected to be an S corporation effective Date 1. A, the sole shareholder of Sub, formed X, a State 1 corporation, on Date 2. On Date 3, incident to what X represents was part of a reorganization under § 368(a)(1)(F), A contributed all the stock in Sub to X, thereby causing Sub to become a wholly owned subsidiary of X. Consistent with Rev. Rul. 2008-18, 2008-1 C.B. 674, X was treated as the successor S corporation to Sub for federal tax purposes and therefore did not make a new S corporation election. Also, on Date 3, Sub converted to a State 2 limited liability company and by default was classified as a disregarded entity for federal tax purposes. On Date 4, X filed an election to treat Sub as a qualified subchapter S subsidiary ("QSub") effective Date 3. However, X's election to treat Sub as a QSub was ineffective because Sub was not a corporation (as defined by § 301.7701-2(b) of the Procedure and Administration Regulations) on Date 3, and therefore, failed to meet all the requirements of § 1361(b)(3)(B) at the time the election was made and for all periods for which the election was to be effective.

X represents that the ineffective QSub election was inadvertent and not the result of tax avoidance or retroactive tax planning. X and Sub agree to make any adjustments that may be required by the Secretary under 1362(f) consistent with the treatment of Sub as a QSub, including filing Form 8832, Entity Classification Election, electing to classify Sub as an association taxable as a corporation effective Date 3.

LAW AND ANALYSIS

Section 1361(a)(1) 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 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 one class of stock.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code-(i) a corporation which 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) provides that the term "QSub" means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1.1361-3(a)(1) of the Income Tax Regulations 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 1362(f) provides, in part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any 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 (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (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 so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, and (4) the corporation for which the election was made or the termination occurred, 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 or a QSub, as the case may be) 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 or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's election to treat Sub as a QSub effective Date 3 was ineffective. We also conclude that the circumstances resulting in the ineffectiveness of the QSub election were inadvertent within the meaning of § 1362(f). Thus, under the provisions of § 1362(f), Sub will be treated as a QSub effective Date 3, provided that the QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

This ruling is contingent on Sub filing Form 8832 electing to be an association taxable as a corporation effective Date 3 within 120 days from the date of this letter. If this requirement is not met, the ruling is null and void.

Except as specifically ruled upon 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 on whether Sub is otherwise eligible to be a QSub.

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.

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

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

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: