

Internal Revenue Service

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

Telephone Number:

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CC:PSI:B03
PLR-114040-21

Date:
December 20, 2021

LEGEND

- X =
- Sub =
- State =
- Date 1 =
- Date 2 =
- Date 3 =

Dear _____ :

This letter responds to a letter dated June 30, 2021, 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 incorporated under the laws of State on Date 1 and elected to be an S corporation effective Date 2. On Date 3, Sub was incorporated under the laws of State and has been wholly owned by X since inception. X represents that it intended to elect to treat Sub as a QSub effective Date 2. However, due to inadvertence, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub.

X represents that it has filed its tax returns consistent with Sub being a QSub effective Date 2.

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 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) generally 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 that is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of the corporation is held 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 provides the time and manner of making a QSub election. Under § 1.1361-3(a)(2), an S corporation makes a QSub election with respect to a subsidiary by filing a Form 8869 with the appropriate service center. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

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.

Under § 301.9100-1(c), the Commissioner 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 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 Internal 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 X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 with respect to the QSub election for Sub. Accordingly, we grant X 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 by filing Form 8869 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: _____
Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy of letter for § 6110 purposes

cc: