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- CC:PSI:B3
- PLR-115485-21
- PLR-115486-21
- PLR-115487-21
- PLR-115488-21
- PLR-115489-21
- PLR-115490-21
- PLR-115491-21
- PLR-115492-21
- PLR-115493-21
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- PLR-115495-21
- PLR-115496-21
- PLR-115497-21
- PLR-115498-21
- PLR-115499-21
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- PLR-115501-21
- PLR-115502-21
- PLR-115503-21
- PLR-115504-21
- PLR-115505-21
- PLR-115506-21
- PLR-115507-21
- PLR-115508-21
- PLR-115509-21
- PLR-115510-21
- PLR-115511-21
- PLR-115512-21
- PLR-115513-21
- PLR-115514-21
- PLR-115515-21
- PLR-115517-21
- PLR-115518-21
- PLR-115519-21
- PLR-115520-21
- PLR-115522-21
- PLR-155523-21
- PLR-115524-21

PLR-115525-21
PLR-115526-21
PLR-115527-21

Date:
April 11, 2022

LEGEND

X =

Y =

Z =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

PLR-115485-21 through PLR-115515-21 3
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

PLR-115485-21 through PLR-115515-21 4
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

Sub 32 =

Sub 33 =

Sub 34 =

Sub 35 =

Sub 36 =

PLR-115485-21 through PLR-115515-21 5
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Sub 37 =

Sub 38 =

Sub 39 =

Sub 40 =

Sub 41 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated May 18, 2021, and subsequent correspondence, 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 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, and Sub 13 (Group 1 Subs) as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code (Code) as well as a ruling under § 1362(f) for ineffective QSub elections for Sub 14, Sub 15, Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, Sub 31, Sub 32, Sub 33, Sub 34, Sub 35, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, and Sub 41 (Group 2 Subs).

FACTS

According to the information submitted and representations within, X was organized under the laws of State on Date 1 and elected to be an S corporation effective Date 1. Y, an S corporation, wholly owned Group 1 Subs and timely elected to treat Sub 1 through Sub 9 as QSubs under § 1361(b)(3). As part of a reorganization, Y's shareholders contributed all of their Y stock to X on Date 1 resulting in X wholly owning Y. X timely elected to treat Y as a QSub under § 1361(b)(3) effective Date 1. X represents that the reorganization did not qualify under § 368(a)(1)(F). Consequently, the QSub elections of Sub 1 through Sub 9 terminated on Date 1. X intended to treat the Group 1 Subs as QSubs under § 1361(b)(3) effective Date 1. However, X failed to timely file a Form 8869, Qualified Subchapter S Subsidiary Election, for each of the Group 1 Subs effective Date 1.

Furthermore, on Date 1, shareholders of Z, a domestic corporation, contributed all of their Z stock to X resulting in X wholly owning Z. X timely elected to treat Z as a QSub under § 1361(b)(3) effective Date 1.

Z wholly owns Sub 14, Sub 15, Sub 34, Sub 35, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, and Sub 41. Y wholly owns Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, Sub 31, Sub 32, and Sub 33. QSub elections under § 1361(b)(3) were made for Sub 14 and Sub 15 effective Date 2, for Sub 16 effective Date 3, for Sub 17 through Sub 38 effective Date 4, and for Sub 39 through Sub 41 effective Date 5. However, the QSub elections for the Group 2 Subs were ineffective under § 1361(b)(3)(B)(ii) because either Y (in the case of Y's wholly owned subsidiaries) or Z (in the case of Z's wholly owned subsidiaries), and not X, the S corporation parent, had filed Forms 8869 electing to treat the Group 2 Subs as QSubs.

X and its shareholders represent that the ineffective QSub elections for the Group 2 Subs were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X also represents that from Date 1 onward X and its shareholders have filed all Federal income tax returns consistent with X being an S corporation and Y, Z, the Group 1 Subs, and the Group 2 Subs being QSubs. X and its shareholders have agreed to make adjustments (consistent with the treatment of the Group 2 Subs as QSubs) as may be required by the Secretary.

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 such year.

PLR-115485-21 through PLR-115515-21 7
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Section 1361(b)(1) provides that the term “small business corporation” means 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) 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 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 prescribes the time and manner for making a QSub election. 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. The proper form for making a QSub election is Form 8869, Qualified Subchapter S Subsidiary Election.

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.

Section 1361(b)(3)(D) provides that if a corporation’s status as a QSub terminates, such corporation (and any successor corporation) shall not be eligible to make an election under § 1361(b)(3)(B)(ii) to be treated as a QSub before its fifth taxable year which begins after the first taxable year for which such termination was effective, unless the Secretary consents to such election.

Section 1.1361-5(c)(2) provides, in part, that in the case of a QSub election effective after December 31, 1996, if a corporation’s QSub election terminates, the corporation may, without requesting the Commissioner’s consent, have a QSub election made with respect to it before the expiration of the five-year period described in § 1361(b)(3)(D) and § 1.1361-5(c)(1), provided that (i) immediately following the termination, the corporation is otherwise eligible to have a QSub election made for it; and (ii) the relevant election is made effective immediately following the termination of the QSub election.

PLR-115485-21 through PLR-115515-21 8
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Section 1362(f) provides, in part, that if (1) an election under § 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1361(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or (B) was terminated under § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or the termination occurred is a QSub, and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as a QSub) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as a QSub during the period specified by the Secretary.

Section 301.9100-1(c) provides that 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 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 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3(a), a request for relief will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSIONS

Based solely 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 Group 1 Subs. Accordingly, we grant X an extension of time of 120 days from the date of this letter to file a properly executed Form 8869 for each of the Group 1 Subs with the appropriate service center effective Date 1. A copy of this letter should be attached to the elections.

Additionally, based solely on the facts submitted and the representations made, we conclude that the QSub elections for the Group 2 Subs were ineffective because Y or Z, and not X, the S corporation parent, filed the Form 8869 for each of the Group 2

PLR-115485-21 through PLR-115515-21 9
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

Subs. We further conclude that the circumstances resulting in the ineffective QSub elections for the Group 2 Subs were inadvertent within the meaning of § 1362(f). Consequently, under § 1362(f), we rule that, provided the QSub elections for the Group 2 Subs were otherwise valid and have not otherwise terminated under § 1361(b)(3)(C), (i) Sub 14 and Sub 15 will be treated as QSubs from Date 2 and thereafter, (ii) Sub 16 will be treated as a QSub from Date 3 and thereafter, (iii) Sub 17 through Sub 38 will be treated as QSubs from Date 4 and thereafter, and (iv) Sub 39 through Sub 41 will be treated as QSubs from Date 5 and thereafter.

Except as expressly provided herein, 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 Y, Z, the Group 1 Subs, and the Group 2 Subs are valid QSubs.

These rulings are directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are 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 requested rulings, it is subject to verification on examination.

PLR-115485-21 through PLR-115515-21 10
PLR-115517-21 through PLR-115520-21
PLR-115522-21 through PLR-115527-21

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

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

Enclosure:
Copy of this letter for § 6110 purposes

cc: