

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202251002**

Release Date: 12/23/2022

Index Numbers: 1361.05-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-106413-22
Date:
September 22, 2022

LEGEND:

X =

Sub =

State =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to a letter dated March 16, 2022, submitted on behalf of X by its authorized representative requesting that the Service grant X an extension of time under § 301.9100-3 of the Procedure and Administration Regulations 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 states that X, a State corporation, was formed on Date 1, and elected to be an S corporation effective Date 2. On Date 2, X acquired all of the stock of Sub, a State corporation. X represents that it intended to elect to treat Sub as a QSub effective Date 2. However, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub.

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) of the Income Tax Regulations provides the time and manner of making a QSub election. An S corporation makes a QSub election for a subsidiary by filing 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 §§ 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 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 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 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 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.

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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____

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

Enclosure:

Copy of this letter for § 6110 purposes

cc: