

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-122197-22

Date:
May 10, 2023

Legend

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to a letter dated November 7, 2022, submitted on behalf of X, requesting a ruling under § 301.7701-3(c)(1)(iv) of the Procedure and Administration Regulations.

FACTS

The information submitted states that X was formed under the laws of State as a limited liability company on Date 1. X subsequently elected to be an S corporation effective Date 2. Under § 301.7701-3(c)(1)(v)(C), X is treated as having made an election to be classified as an association taxable as a corporation for federal tax purposes effective Date 2. On Date 3, the owners of X formed Y, and on Date 4, the owners of X contributed all outstanding X shares to Y. As a result of the transaction, Y was treated as an S corporation and subsequently made an election for X to be treated as a Qualified Subchapter S Subsidiary (QSub) pursuant to § 1361(b)(3). On Date 5, a new owner acquired more than fifty percent of X.

LAW AND ANALYSIS

Section 1361(b)(3)(A) of the Internal Revenue Code 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 which 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. Section 1.1361-3(a)(2) provides that 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 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that, unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on the Form 8832 or on the date filed

if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.7701-3(c)(1)(iv) provides that, if an eligible entity makes an election under § 301.7701-3(c)(1)(i) to change its classification, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election.

Section 301.7701-3(c)(1)(v)(C) provides that an eligible entity that timely elects to be an S corporation under § 1362(a)(1) is treated as having made an election under § 301.7701-3 to be classified as an association, provided that (as of the effective date of the election under § 1362(a)(1)) the entity meets all other requirements to qualify as a small business corporation under § 1361(b). Subject to § 301.7701-3(c)(1)(iv), the deemed election to be classified as an association will apply as of the effective date of the S corporation election and will remain in effect until the entity makes a valid election, under § 301.7701-3(c)(1)(i), to be classified as other than an association.

CONCLUSION

Based solely on the information submitted and the representations made, we consent to X changing its entity classification to a partnership for federal tax purposes effective Date 6, the day immediately after Date 5, under § 301.7701-3(c)(1)(iv). As a result, X is granted an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as a partnership for federal tax purposes, effective Date 6. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on X and its owner filing, within 120 days from the date of this letter, any required returns (including amended returns) consistent with the requested relief being effective on Date 6. A copy of this letter should be attached to any such returns or amended returns. If this condition is not met, then this ruling is null and void. A copy of this letter should be attached to any such returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to make the election.

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 request for ruling, 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 the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Joy C. Spies
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: