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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-112326-23

Date:

December 11, 2023

LEGEND:

X =

Sub 1 =

Sub 2 =

A =

State =

Date =

Dear :

This letter responds to a letter dated June 8, 2023, and subsequent correspondence, submitted on behalf of X, by its authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code (Code) for X to elect to be an S corporation and an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Sub 1 and Sub 2 as qualified subchapter S subsidiaries (QSubs).

FACTS

The information submitted states that X was incorporated under the laws of State on Date. A was the sole shareholder of X. X intended to elect to be an S corporation effective Date but did not file a timely election. X owned 100% of Sub 1 and Sub 2. X intended to make QSub elections for Sub 1 and Sub 2 effective Date, however the proper elections were not filed.

X represents that X and its shareholders have treated X as an S corporation, and Sub 1 and Sub 2 as QSubs since Date.

LAW

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.

Section 1362(b)(5) provides that if: (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year.

Section 1361(b)(3)(A) generally provides that (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, for purposes of § 1361(b)(3)(B), the term “qualified subchapter S subsidiary” 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) of the Income Tax Regulations prescribes the time and manner for making an election to be classified as a QSub. Section 1.1361-3(a)(4) provides that an election cannot be effective more than two months and 15 days prior to the date the election is filed or more than 12 months after the election is filed. The proper form for making the 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 the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no 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) 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 the rules governing automatic extensions of time for making certain elections. 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.

Section 301.9100-3(a) provides that requests for relief 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 (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation with a calendar tax year effective Date, and thus, is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, effective Date, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made for Date.

In addition, we conclude that X has satisfied the requirements of § 301.9100-3 with respect to the late QSub elections for Sub 1 and Sub 2. As a result, provided that X makes a QSub election for Sub 1 and Sub 2 by filing completed Forms 8869 effective Date, respectively, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such elections will be treated as timely made for Date.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was otherwise a valid S corporation and whether Sub 1 and

Sub 2 were otherwise valid QSubs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it 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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of this letter for § 6110 purposes

cc: