

X represents that its failure to file a QSub election for Y was inadvertent and not the result of tax avoidance or retroactive tax planning. X further represents both it and Y

have filed tax returns and reported all tax items consistent with the tax treatment of Y as a QSub for all relevant years since Date 1.

LAW AND ANALYSIS

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) provides that the term "QSub" 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)(1) of the Income Tax Regulations provides that the corporation for which a QSub election is made must meet all the requirements of § 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

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.

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.

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 extensions that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request 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 that (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the information submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to file Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center on behalf of Y effective Date 1. A copy of this letter should be attached to the Form 8869.

Except as expressly provided herein, we express or imply no opinion concerning the federal income tax consequences of the facts under any other provision of the Code. Specifically, we express or imply no opinion on whether X met the definition of an S corporation under § 1361(b)(1) or Y met the definition of a QSub under § 1361(b)(3).

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) provides that it may not be used or cited as precedent.

Sincerely,

Joy Spies, Senior Technician Reviewer
Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

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PLR-112446-23

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cc: