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Department of the Treasury
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Third Party Communication: None
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Person To Contact:
_____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-107071-06
Date: June 12, 2006

Legend:

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear _____ :

This letter responds to your letter, on behalf of X, dated January 23, 2006, requesting (1) an extension of time under section 301.9100 to elect to be treated as a qualified subchapter S subsidiary (QSub) under section 1361(b)(3)(B) of the Internal Revenue Code, and (2) relief under section 1362(f) for an inadvertent QSub termination.

Facts

Based on the materials submitted and representations contained within, we understand the relevant facts to be as follows. X is a corporation formed in accordance with the laws of State on Date 1. X filed a timely election to be treated as an S corporation effective Date 2. On Date 3, the shareholders of X, as part of a reorganization under section 368(a)(1)(F), contributed all of their shares of X to Y in exchange for shares in Y. Y filed a timely Form 2553 and Form 8832, effective Date 3. Y intended that X be treated as a QSub, effective Date 3, but inadvertently failed to file a timely Form 8869 (Qualified Subchapter S Subsidiary Election). On Date 4, as part of a subsequent restructuring, less than 100 percent of X shares were held by Y, which would have caused the termination of X's QSub status under section 1361(b)(1)(C). On Date 5, shares of X were reacquired by Y so that it would once again qualify as a QSub.

Law and Analysis

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election with a due date 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 a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Section 1362(f) provides that if (1) an election under section 1361(b)(3)(B) by any corporation (A) was not effective for the taxable year for which made (determined without regard to section 1362(b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of section 1362(d), (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 (A) so that the corporation is a

small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to section 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) 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 an S corporation or a qualified subchapter S subsidiary, as the case may be during the period specified by the Secretary.

Conclusion

Based on the facts submitted and representations contained within, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. Y is granted an extension of 60 days from the date of this letter for electing under section 1361(b)(3)(B) to treat X as a QSub, effective Date 3. Within the extension period, Y must file a Form 8869 with the appropriate Service Center. A copy of this letter should be attached to the election.

We further conclude that the termination of X's QSub election was inadvertent within the meaning of section 1362(f). Accordingly, pursuant to the provision of section 1362(f), X will be treated as continuing to be a QSub from Date 4 to Date 5, and thereafter, provided that X's QSub status is not otherwise terminated.

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 no opinion on the validity of the reorganization under section 368(a)(1)(F) or its tax consequences. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

In accordance with the power of attorney on file with the office, a copy of this letter will be sent to the taxpayer's representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to section 6110(k)(3) of the Internal Revenue Code, this ruling may not be used or cited as precedent.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes