

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201644003**

Release Date: 10/28/2016

Index Number: 1362.04-00, 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:B01  
PLR-101451-16

Date:  
July 19, 2016

LEGEND

X =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

State =

n =

Dear \_\_\_\_\_ :

This responds to a letter dated December 30, 2015, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code for an inadvertent invalid S election and under § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to elect to treat Sub 1, Sub 2, Sub 3, and Sub 4 as qualified subchapter S subsidiaries (QSubs) under section § 1361(b)(3) of the Code.

#### FACTS

According to the information submitted and representations within, X was incorporated on Date 1, under the laws of State and elected to be treated as an S corporation effective Date 3.

The spouses or former spouses of n shareholders of X, who held their shares as community property under State law, failed to sign the Form 2553. As a result, X's S election was ineffective. Additionally, the number of shares owned by each shareholder, as reflected on the form 2553, was not accurate.

On Date 2, X adopted a resolution approving a stock split and issued additional shares as part of this stock split. X represents that the stock split was ineffective because of X's inadvertent failure to comply with certain State law requirements. On Date 8, X adopted a resolution nullifying the stock split and approving the Date 2 issuance of shares as a stock dividend.

X represents that it intended to elect to treat Sub 1 and Sub 2 as QSubs effective Date 3, Sub 3 as a QSub effective Date 4, and Sub 4 as a QSub effective Date 5. However, due to inadvertence, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub 1, Sub 2, Sub 3, and Sub 4.

Effective Date 6 and Date 7, X elected to treat Sub 5 and Sub 6, respectively, as QSubs. However, X's S election was not valid on Date 3, thus invalidating X's QSub elections.

X represents that, at all times on and after Date 3, the date of X's intended S election, X has owned all of the outstanding stock of Sub 1 and Sub 2. X represents that, at all times on and after Date 4, Date 5, Date 6 and Date 7, X has owned all of the outstanding stock of Sub 3, Sub 4, Sub 5 and Sub 6, respectively.

X represents that the ineffectiveness of its S election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that all of X's distributions to shareholders have been pro rata in accordance with their ownership interests. X also represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent invalid election rule as provided under § 1362(f) that may be required by the Secretary. X and its shareholders represent that they have filed all returns consistently X with being an S corporation. X also represents that X has filed tax returns for all tax years consistent with the treatment of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6 as QSubs.

## LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(b)(3)(A) generally 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 that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub .

Section 1.1361-3(a) 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 may be effective up to two months and 15 days prior to the date the election is filed or not 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 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(a)(2) provides that an election under § 1362(a) shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § (b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) § 1362(d) or § 1361(b)(3)(C); (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 for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a Qsub, as the case may be) 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 Qsub, as the case may be, during the period specified by the Secretary.

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 elections 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 evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election was ineffective on Date 3. We further conclude that the ineffective election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on X filing a corrected Form 2553, Election by a Small Business Corporation, with the appropriate service center, within 120 days from the date of this letter, effective Date 3. A copy of this letter should be attached to the election.

Furthermore, based solely on the facts 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 elect to treat Sub 1 and Sub 2 as QSubs, effective Date 3, and Sub 3 and Sub 4 as QSubs effective Date 4 and Date 5, respectively. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Furthermore, Sub 5 and Sub 6 will be treated as QSubs effective Date 6 and Date 7, respectively, and thereafter, provided Sub 5 and Sub 6 otherwise are eligible to be treated as QSubs.

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, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation, or whether Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6 are eligible to be QSubs, for federal tax purposes.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

Joy C. Spies

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

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: