

**Internal Revenue Service**

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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-131476-16

Date:

February 22, 2017

LEGEND

X =

Y =

Z =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Year1 =

Year2 =

Dear :

This responds to a letter dated October 5, 2016, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a late entity classification election to be treated as an association taxable as a corporation, relief to make a late S corporation election under § 1362(b)(5) of the Internal Revenue Code (the Code), and an extension of time under 301.9100-3 to make elections to treat Y and Z as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3)(B)(ii) of the Code and 1.1361-3 of the Income Tax Regulations. As part of this request, X also requests relief for ineffective QSub elections under § 1362(f) on behalf of Y and Z due to the fact that X was an ineligible shareholder at the time X had acquired the shares of Y and Z (and, as a result, the QSub elections on behalf of Y and Z would have been ineffective even if they had been timely made).

The information submitted states that X was formed under the laws of State on Date1 as a limited liability company. At the time of its formation, more than one individuals owned interests in X. On Date2, X purchased all of the issued and outstanding shares of Y. Y was a corporation that had been formed under the laws of State on Date3 that had previously elected to be an S corporation. On Date4, all of the issued and outstanding shares of Z were contributed to X. Z was a corporation that had been formed under the laws of State on Date5 that had previously elected to be an S corporation. X represents that its owners always intended to treat X, Y and Z as passthrough entities but were unaware and were not advised that X's acquisition of the shares of Y and Z would cause the S corporation elections of Y and Z to terminate.

X represents that X and all of X's shareholders have filed tax returns consistent with X being a passthrough entity since Date1, and filed returns for Y and Z as if they were S corporations since Date2 and Date4, respectively. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation, and Y and Z as QSubs, as may be required by the Secretary.

#### RULINGS REQUESTED

1. X requests an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to make a late entity classification election to be treated as an association taxable as a corporation effective Date2;
2. X requests relief for X to make a late S corporation election under §1362(b)(5) of the Internal Revenue Code (the Code) effective Date2;
3. X requests inadvertent ineffective election relief under § 1362(f) on behalf of Y and Z to be treated as QSubs under § 1361(b)(3)(B)(ii) of the Code and § 1.1361-3 of the Income Tax Regulations effective Date2 and Date4, respectively; and
4. X requests an extension of time under 301.9100-3 to make late elections to treat Y and Z as QSubs effective Date2 and Date4, respectively.

## RULING 1

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. Elections are necessary only when an eligible entity does not want to be classified under its 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 an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

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) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 the 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.

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 (2) the grant of relief will not prejudice the interests of the Government.

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date2. A copy of this letter should be attached to the Form 8832.

## RULING 2

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b)(1) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

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.

Based solely on the facts submitted and the representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date2. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date2, 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 Date2.

## RULING 3

Section 1361(b)(3)(B) provides that the term "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation (as defined in § 1362(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 qualified subchapter S subsidiary.

Section 1.1361-3(a)(1) provides that the corporation for which the 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)(2) provides that, except as provided in § 1361(b)(3)(D) and § 1.1361-5(c) (five-year prohibition on reelection), an S corporation may elect to treat an eligible subsidiary as a QSub by filing the completed Form 8869, Qualified Subchapter S Subsidiary Election.

Section 1.1361-3(a)(3) provides that a QSub election may be made by the S corporation parent at any time during the taxable year.

Section 1.1361-3(a)(4) provides that a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing. For this purpose, the definition of the term *month* found in § 1.1362-6(a)(2)(ii)(C) applies. If an election specifies an effective date more than two months and 15 days prior to the date on which the election form is filed, it will be effective two months and 15 days prior to the date it is filed. If an election form specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by a corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, such corporation will be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that any QSub elections filed on behalf of Y and Z with an effective date of Date2 and Date4, respectively, would have been ineffective if they had been timely filed because X, on those dates, had not properly or timely elected to be an S corporation effective on those dates. We further conclude that any QSub elections timely filed on behalf of Y and Z with an effective date of Date2 and Date4, respectively, would have been inadvertently ineffective within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), Y and Z will be treated as making effective QSub elections with an effective date of Date2 and Date4, respectively, provided that a late S corporation election is filed for X as provided for above, and late QSub elections for Y and Z are filed as provided for below.

#### RULING 4

Section 1361(b)(3)(A) of the Internal Revenue Code (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, 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) 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 to treat an eligible subsidiary as a QSub 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.

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) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 the 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.

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 (2) the grant of relief will not prejudice the interests of the Government.

Based solely upon the information submitted and the representations made, we conclude that the requirements of § 301.9100 have been satisfied. X is granted an extension of time of 120 days from the date of this letter to file Forms 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center to elect to treat Y as a QSub effective Date2 and to elect to treat Z as a QSub effective Date4. A copy of this letter should be attached to each Form 8869.

All of the rulings contained above are contingent upon X filing amended federal tax returns for Year1 through Year2 consistent with the treatment of X as an S corporation, and Y and Z as QSubs for all applicable tax years. If this condition is not met, then this letter ruling is null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation. Further, no opinion is expressed as to whether Y and Z are eligible to elect to be treated as QSubs or were previously eligible to be S corporations.

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 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 rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: