

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201940006**
Release Date: 10/4/2019

Third Party Communication: None
Date of Communication: Not Applicable

Index Numbers: 1361.00-00, 1361.05-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-134892-18
Date: July 2, 2019

LEGEND

X =

Sub =

State =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear :

This letter responds to a letter dated October 17, 2018, and subsequent information, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect

to treat Sub as a qualified subchapter S subsidiary (“QSub”) under § 1361(b)(3) of the Internal Revenue Code (Code) and to elect to treat X and Sub as associations taxable as corporations for federal tax purposes.

FACTS

The information submitted states that Sub was formed under the laws of State on D1 and elected to be an S corporation on D3. X was formed under the laws of State on D2 and elected to be an S corporation effective D4. On D5, X purchased all the stock of Sub, so that X became the sole shareholder of Sub. X represents that it intended to elect to treat Sub as a QSub. However, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub. On D6, Sub and X converted from corporations to LLCs which was intended to qualify as a reorganization under § 368(a)(1)(F). However, due to inadvertence, Sub and X did not elect to be treated as associations taxable as corporations by filing Form 8832, Entity Classification Election.

LAW AND ANALYSIS

Section 1361(a) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 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 one class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation.

Section 1361(b)(3)(A) provides that except as provided in regulations prescribed by the Secretary, for purposes of Title 26, (i) a corporation that 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) defines the term “qualified subchapter S subsidiary” as a domestic corporation that is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election for a subsidiary by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under §§ 301.9100-1 and 301.9100-3.

Section 301.7701-3(a) of the Income Tax Regulations 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. A “business entity” is an entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. Section 301.7701-2(a). An eligible entity with a single owner can elect either to be classified either as an association (and thus a corporation under § 301.7701-2(b)(2)) or as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members or disregarded as an entity separate from its owner if it has a single owner.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election can be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

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

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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.

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

CONCLUSION

Based on the facts and representations submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of one hundred twenty (120) days from the date of this letter to elect to treat Sub as a QSub, effective D5. The election should be made for Sub by filing Form 8869 with the appropriate service center, with a copy of this letter attached. A copy is enclosed for that purpose.

In addition, X and Sub are granted an extension of time to elect to be treated as associations as of D6. X and Sub have one hundred twenty (120) days from the date of this letter to file Form 8832 with the applicable service center to elect to be treated as an association for federal tax purposes as of D6.

If these elections are made, X will be treated as continuing to be an S corporation from D6 and thereafter, provided that X's subchapter S election is not otherwise terminated under § 1362(d). Likewise, Sub will be treated as a QSub from D5.

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 or imply no opinion concerning whether X is a valid S corporation or whether Sub is eligible to be a QSub.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3) of the Code, this ruling 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.

Under a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Stacy L. Short
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy of this letter for § 6110 purposes