Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-117184-20

Date:
January 11, 2021

Legend

X =

Sub =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to a letter dated August 3, 2020, and subsequent correspondence, submitted on behalf of X by its authorized representatives requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

According to the information submitted, X was organized under the laws of State on Date 1. Sub was organized under the laws of State on Date 2 and made an election to be a subchapter S corporation effective Date 3. On Date 4, as part of what X represents was a reorganization under § 368(a)(1)(F), Sub's shareholders contributed all their stock in Sub to X, thereby causing Sub to become a wholly owned subsidiary of X. Consistent with Rev. Rul. 2008-18, 2008-1 C.B. 674, X was treated as the successor S corporation to Sub for federal income tax purposes and therefore did not make a new S election. Sub then merged into a newly formed limited liability company under State law on Date 5, that was treated as a disregarded entity for Federal tax purposes. Afterwards, on Date 6, X made an election to treat Sub as a qualified subchapter S subsidiary ("QSub") effective on Date 4. However, X discovered that its election to treat Sub as a QSub was ineffective due to Sub's failure to meet all the requirements of § 1361(b)(3)(B) at the time the election was made. Specifically, Sub was not a corporation, as defined by § 301.7701-2(b) of the Income Tax Regulations, at the time the election was made. See Reg. § 1.1361-3(a)(1).

X represents that the ineffective QSub election for Sub was inadvertent and not the result of tax avoidance or retroactive tax planning. X further represents that no Federal tax return of any person has been filed inconsistent with a valid QSub election having been made for Sub effective Date 4. Sub and X have agreed to make any adjustments required by the Service consistent with the treatment of Sub as a QSub.

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) 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 1362(f) provides 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 § 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) or § 1361(b)(3)(C), (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 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 shareholder consents, and (4) the corporation for which the election was made or the termination occurred, 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 QSub, 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, the corporation will be treated as an S corporation or a QSub, as the case may be during the period specified by the Secretary.

Rev. Rul. 2008-18, situation 1, holds that, consistent with Rev. Rul. 64-250, 1964-2, C.B. 333, a reorganization under § 368(a)(1)(F) did not cause the termination of an S corporation election under § 1362. In Rev. Proc. 2008-18, B, an individual, owns all of the stock in Y, an S corporation. In Year 1, B forms Newco and contributes all of the Y stock to Newco. Newco meets the requirements for qualification as a small business corporation and timely elects to treat Y as a qualified subchapter S subsidiary (QSub), effective immediately following the transaction. The transaction meets the requirements of a reorganization under § 368(a)(1)(F). Y's original S election does not terminate but continues for Newco. Newco must obtain a new EIN. Y must retain its EIN even though a QSub election is made for it and must use its original EIN any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates.

Rev. Rul. 64-250 holds that a reorganization under § 368(a)(1)(F) did not cause a termination of an election under former § 1372, the predecessor to § 1362. In that revenue ruling, an electing small business corporation within the meaning of former § 1371(b) was reincorporated in another state through the corporation's shareholders organizing a new corporation in another state and merging the existing corporation into the new corporation. The revenue ruling states that the surviving corporation also met the requirements for qualification as a small business corporation.

Conclusions

Based solely on the facts submitted and representations made, we conclude that X's election to treat Sub as a QSub on Date 4 was ineffective. We also conclude that the circumstances resulting in the ineffectiveness of the QSub election were inadvertent within the meaning of § 1362(f). Therefore, under the provisions of § 1362(f), Sub will be treated as a QSub effective on Date 4, provided that Sub's QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

Except as expressly provided herein, we express or imply no opinion concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether X was

otherwise eligible to be treated as an S corporation or whether Sub was otherwise eligible to be treated as a QSub. Further, we express or imply no opinion on the validity of the reorganization under §368(a)(1)(F) or the merger occurring on Date 5 and tax consequences from either transaction.

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 that requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

_____

Wendy L. Kribell
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: