

Dear _____ :

This letter responds to a letter dated December 19, 2022, submitted on behalf of X by its authorized representatives, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.1368-1(g)(2) of the Internal Revenue Code ("Code").

FACTS

The information submitted states that X was organized as a corporation under the laws of State on Date 1. Effective Date 2, X elected to become an S corporation for U.S. federal income tax purposes.

On Date 3, A and B transferred a total of n% of X's stock to Trust 1 and Trust 2. X represents that it intended to make a § 1.1368-1(g)(2) election for its Year taxable year. However, X inadvertently failed to timely file a § 1.1368-1(g)(2) election to treat its Year taxable year as if it had two separate taxable years based on the Date 3 stock transfers.

LAW AND ANALYSIS

Section 1377(a)(1) of the Code provides, in general, that each S corporation shareholder's pro rata share of any item for any taxable year is the sum of the amounts determined for the shareholder by assigning an equal portion of the item to each day of the tax year and then dividing that portion pro rata among the shares outstanding on that day.

Section 1.1368-1(g)(1) of the Procedure and Administration Regulations provides that an S corporation that undertakes a "qualifying disposition" of stock may make an election under Section 1.1368-1(g)(2) to divide a taxable year into two separate taxable years, with the first taxable year ending at the close of the day on which the qualifying disposition takes place.

Section 1.1368-1(g)(2)(i)(A) provides that a "qualifying disposition" includes "a disposition by a shareholder of 20 percent or more of the outstanding stock of the corporation in one or more transactions during any thirty-day period during the corporation's taxable year.

Section 1.1368-1(g)(2)(ii) provides that an S corporation that makes the election under § 1.1368-1(g)(2)(i) must treat the taxable year as separate taxable years for purposes of allocating items of income and loss; making adjustments to the AAA, earnings and profits, and basis; and determining the tax effect of distributions under § 1368(b) and (c).

Section 1.1368-1(g)(2)(iii) provides that an S corporation makes the election under Section 1.1368-1(g)(2)(i) by attaching a written statement to its timely filed (including extensions) original or amended U.S. federal income tax return for a taxable year (without regard to the election under § 1.1368-1(g)(2)(i)). The written statement must: (1) state that the S corporation is electing for the taxable year under § 1.1368-1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years; (2) set forth facts relating to the qualifying disposition; and (3) state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under § 1.1368-1(g)(2)(i)) consents to the election.

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 an 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 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.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to make an election under § 1.1368-1(g)(2)(i) effective for its Year taxable year. The election should be made in a written statement filed with the appropriate service center to be associated with X's Year tax return. A copy of this letter should be attached to the relevant filing.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____

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

Enclosure
Copy for § 6110 purposes

cc: