

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-124831-23

Date:  
June 22, 2024

Legend:

X =

Sub =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated December 22, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting that the Service grant X an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Sub as a qualified subchapter S Subsidiary (“QSub”) under § 1361(b)(3) of the Internal Revenue Code (Code).

## FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. On Date 2, Sub was incorporated under the laws of State. X engaged a tax advisor for assistance on filing S corporation status for X and QSub status for Sub with the effective date of Date 3. The tax advisor advised that X would need to file two Form 2553s and a State equivalent form for state purposes to effectuate the S Corporation status for X and QSub election for Sub. Relying on that advice, X filed two Form 2553s on Date 4. Due to reliance on the tax advisor's advice, X inadvertently failed to timely file a QSub election for Sub.

X represents that the shareholders of X reported consistently with the treatment of Sub as a QSub.

## LAW

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may election, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.

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 failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year.

Section 1361(b)(3)(A) generally provides that (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, for the purposes of § 1361(b)(3)(B), the term "qualified subchapter S subsidiary" 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) 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 cannot be effective more than two months and 15 days prior to the date the election is filed or 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 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the 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 not 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.

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.

Section 301.9100-3(a) provides that requests 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.

### CONCLUSION

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Consequently, we grant X 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 Date 3. Election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. 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. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

The ruling contained in this letter is based upon information and representation 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.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By:

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Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc: