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:B3
PLR-124103-14

Date:
November 03, 2014

X =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated May 30, 2014, and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1362(e)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X elected to be treated as an S corporation effective Date 1. X's S corporation election terminated by revocation effective Date 2, resulting in the division of X's termination year into an S short year and a C short year pursuant to § 1362(e)(1). At the time of the execution of the revocation, X intended to file an election pursuant to § 1362(e)(3) with its tax return for its C short year. However, the § 1362(e)(3) election statement inadvertently was not included with X's return for the C short year.

X represents that it relied upon its tax advisor, a certified public accounting firm, to file all necessary forms to make the election. X further represents that it prepared all of its records and tax returns on the basis of and consistent with the § 1362(e)(3) election having been made.

LAW AND ANALYSIS

Section 1362(e)(1) provides that, in the case of an S termination year, for purposes of title 26 - (A) The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation and (B) The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

Section 1362(e)(2) provides that, except as provided in § 1362(e)(3) and § 1362(e)(6)(C) and (D), the determination of which items are to be taken into account for each of the short taxable years referred to in § 1362(e)(1) shall be made (A) first by determining for the S termination year (i) the amount of each of the items of income, loss, deduction, or credit described in § 1366(a)(1)(A), and (ii) the aggregate amount of the nonseperately computed income or loss, and (B) then by assigning an equal portion of each amount determined under § 1362(e)(2)(A) to each day of the S termination year.

Section 1362(e)(3)(A) provides that a corporation may elect to have § 1362(e)(2) not apply. Section 1362(e)(3)(B) provides that an election under § 1362(e)(3) shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who were shareholders in the corporation on the first day of the C short year consent to such election.

Section 1362(e)(4) provides that, for purposes of § 1362(e)(4), the term "S termination year" means any taxable year of a corporation (determined without regard to § 1362(e)(4)) in which a termination of an election is made under § 1362(a) takes effect (other than on the 1st day thereof).

Section 1.1362-6(a)(5) of the Income Tax Regulations provides that, to elect not to apply the pro rata allocation rules to an S termination year, a corporation files a statement that it elects under § 1362(e)(3) not to apply the rules provided in § 1362(e)(2). In addition to meeting the requirements of § 1.1362-6(a)(1), the statement must set forth the cause of the termination and the date thereof. The statement must be filed with the corporation's return for the C short year. This election may be made only with the consent of all persons who are shareholders of the corporation at any time during the S short year and all persons who are shareholders of the corporation on the first day of the C short year (in the manner required under § 1.1361-6(b)(1)).

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 Internal Revenue Code (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 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 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.

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, X is granted an extension of time of 120 days from the date of this letter to make a § 1362(e)(3) election. The election should be made in a written statement filed with the applicable service center for association with X's tax return for its C short year. A copy of this letter should be attached to the statement filed. The election must satisfy the requirements of §§ 1.1362-6(a)(5) and 1.1362-6(b)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to whether X otherwise qualifies as an S corporation for federal tax purposes. We also express no opinion as to whether X's computation or allocation of its income, loss, deduction or credit for its S short year and C short year is correct or whether the income tax reporting of X's shareholders or any entities related to X for those years was correct. In addition, any items of income or expense that were not determined by the time for the closing of the X's permanent records for the tax year including Date 2, must be reported in a subsequent period. Items will be attributed to the short S year and short C year according to the time they were incurred or realized, as reflected in such records.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), 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 X's authorized representative.

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 rulings requested, it is subject to verification on examination.

Sincerely,

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

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes