Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-120670-16
Date:
November 04, 2016

LEGEND

X =

State =

Date1 =

Date2 =

Dear :

This responds to a letter dated June 15, 2016, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 to file an election under § 1362(e)(3) of the Internal Revenue Code ("Code").

The information submitted states that X is a corporation that was formed under the laws of State on Date1 and elected to be treated as an S corporation within the meaning of § 1361(a) of the Code effective Date1. X's S corporation election terminated on Date2 when X ceased to qualify as a small business corporation pursuant to § 1362(d)(2). This termination resulted 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 termination, 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 relief upon its tax advisor, a certified public accounting firm, to prepare and file all necessary forms to make the election. X further represents that it prepared an filed its tax returns for the termination year on the basis of and consistent with the § 1362(e)(3) election having been made.

Section 1362(e)(1) provides that, in the case of an S termination year, the portion of the year ending before the first day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation, and the portion of the year beginning on the first 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(d)(1)(A), and (ii) the aggregate amount of the nonseparately computed income or loss, and (B) then by assigning an equal portionof 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 made under § 1362(a) takes effect (other than the on the first 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 statements 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 § 1.1362-6(b)(1).

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) 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.

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 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 that (2) the grant of relief will not prejudice the interests of the Government.

Based solely upon the information submitted and the representations made, we conclude that the requirements of § 301.9100 have been satisfied. Accordingly, 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 or qualified as an S corporation for federal tax purposes. We also express no opinion as to whether X's computation or allocation of its items of income, loss deduction or credits 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 is correct. In addition, any items of income or expense that were not determined by the time for the closing of X's permanent records for the tax year including Date2 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.

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 requesting it. Section 6110(k)(3) 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 X's authorized representative.

Sincerely,

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

Enclosures (3)
Copies of this letter
Copy for § 6110 purposes