

Internal Revenue Service

Number: **202352001**
Release Date: 12/29/2023
Index Number: 1362.04-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-103596-23

Date:
August 17, 2023

LEGEND

A =

X =

Sub =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated February 10, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X, a State 1 limited partnership that had elected to be an association under § 301.7701-3 of the Procedure and Administration Regulations effective Date 1, elected to be an S corporation effective Date 2. Additionally, X elected to treat its subsidiary, Sub, a State 2 limited partnership that had elected to be an association under § 301.7701-3 effective Date 1, as a qualified subchapter S subsidiary (QSub) effective Date 2. In Date 3, X learned that its election to treat Sub as a QSub was ineffective because X did not own 100 percent of the stock of Sub as required under § 1361(b)(3)(B)(i). X then took steps so that it owned 100 percent of the stock of Sub as required under § 1361(b)(3)(B)(i).

X represents that its ineffective QSub election for Sub was inadvertent and was not the result of tax avoidance or retroactive tax planning. X further represents that it has filed its federal tax returns consistent with Sub being a QSub effective Date 2. X and its shareholder, A, agree to make any adjustments that the Commissioner may require 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) of the Income Tax Regulations 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 such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such 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 required 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 such ineffectiveness or termination, such corporation shall be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's election to treat Sub as a QSub effective Date 2 was ineffective. We further conclude that the circumstances resulting in the ineffectiveness of the QSub election for Sub were inadvertent within the meaning of § 1362(f). Therefore, under the provisions of § 1362(f), Sub will be treated as a QSub effective Date 2 and thereafter, provided the QSub election was otherwise valid and was not terminated under § 1361(b)(3)(C).

Except as specifically ruled above, 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 Sub was otherwise eligible to be treated as a QSub.

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 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 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.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc: