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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-116549-24

Date:

February 28, 2025

LEGEND

X =

Y =

A =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated September 9, 2024, and subsequent correspondence, 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 § 301.7701-3 to be treated as a corporation for federal tax purposes, relief to make a late S corporation election under relief under §

1362(b)(5) of the Internal Revenue Code (the Code), and relief under § 1362(f) of the Code.

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X's shareholders intended that X elect S corporation treatment effective Date 2.

However, X's Form 2553, Election by a Small Business Corporation, was not timely filed. In addition, X discovered that one of its shareholders, Y was an ineligible S corporation shareholder. On Date 3, X and Y took remedial action by having Y transfer all of its shares in X to an eligible S corporation shareholder, A. X represents that between Date 1 and Date 3, the shareholder of Y was an eligible shareholder of an S corporation.

X represents that X and its shareholders have filed tax returns consistent with being an S corporation for all relevant periods. X further represents that the circumstances resulting in the invalidity of its S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments consistent with the treatment of X as an S corporation, as may be required by the Secretary.

RULINGS REQUESTED

1. X requests an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to make a late entity classification election to be treated as an association taxable as a corporation effective Date 2;
2. X requests relief for X to make a late S corporation election under § 1362(b)(5) of the Code effective Date 2; and
3. X requests relief under § 1362(f) of the Code.

LAW AND ANALYSIS

Ruling 1

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides that unless the entity elects otherwise, a domestic eligible entity is: (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification by filing Form 8832 with the IRS Service Center designated on the form.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9110-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a “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 automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions 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 under § 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 (i) the taxpayer acted reasonably and in good faith, and (ii) the grant of relief will not prejudice the interests of the Government.

Ruling 2

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

Section 1362(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 third month of the taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Ruling 3

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(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 third month of the taxable year.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever the corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) 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 paragraph (2) or (3) of § 1362(d); (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 is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, 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) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSIONSRuling 1

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as an association taxable as

a corporation for federal tax purposes, effective Date 2. A copy of this letter should be attached to the Form 8832.

Ruling 2

Based solely on the facts submitted and the representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 2. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 2, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made for Date 2.

Ruling 3

Based solely on the information submitted and the representations made, we conclude that X's S election terminated on Date 2, when shares of X stock were owned by Y. We further conclude that the termination was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on and after Date 2, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d). Y will be treated as a shareholder of X from Date 2 until Date 3, at which point A will be treated as the shareholder. Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether X was or is otherwise eligible to be treated as an S corporation.

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.

The ruling contained in this letter is based on 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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Jeffrey A. Erickson
Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

By: _____
Laura C. Fields
Chief, Branch 1
Office of Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure

Copy of letter for § 6110 purposes

cc: