

## Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-112242-17

Date:

July 31, 2017

### Legend

X =

Y =

A =

B =

State1 =

State2 =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This responds to a letter dated April 10, 2017, and subsequent correspondence submitted on behalf of X and Y, requesting that the Service grant X an extension of time

under § 301.9100-3 of the Procedure and Administration Regulations to file an entity classification election, and requesting that the Service grant relief to Y under § 1362(f) of the Internal Revenue Code ("Code").

The information submitted states that X was formed as a limited liability company under the laws of State1 on or about Date1. X has been wholly owned by A since its date of formation, and therefore X is eligible to be treated as disregarded as an entity separate from its owner for federal tax purposes.

The information submitted further states that Y had been formed as a limited liability company under the laws of State2 on Date2 and was reconstituted as a limited liability company under the laws of State1 on Date3. At the time of its formation, Y had two individuals as members, A and B. Y filed an election to be treated as an S corporation beginning on Date2.

Based on advice from A's accountant, A transferred A's interests in Y to X after X's formation on Date1. In addition, based on the advice of A's accountant, X filed an election to be treated as an S corporation effective Date4. However, A's accountant failed to advise A, X or Y that the S corporation election by X (which is also a deemed entity classification election to treat X as an association taxable as a corporation for federal tax purposes) would cause the S corporation election of Y to terminate, since X would be an ineligible S corporation shareholder.

The information submitted further states that Y and Y's shareholders (including A indirectly through X) have filed tax returns consistent with Y being an S corporation since Date4. Y further represents that the circumstances resulting in the termination of Y's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Y and each person who was or is a shareholder of Y (including A indirectly through X) at any time since Date4 agree to make any adjustments (consistent with the treatment of Y as an S corporation) as may be required by the Secretary with respect to such period.

Section 301.7701-2(a) generally provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-3(a) provides that an eligible entity with at least two members may elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or as 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(a) further provides that so long as a business entity is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity), it may elect its classification for federal tax purposes.

Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to seventy-five (75) days prior to the date the form is filed or up to twelve (12) months after the date on which the form is filed.

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 Internal Revenue 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 the 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. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

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 such year.

Section 1361(b)(1)(B) provides that a “small business corporation” means a domestic corporation that is not an ineligible corporation and that does not 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.

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

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. 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 to elect to be treated as a disregarded entity effective Date4. A consequence of this late election will be to render the S corporation election of X previously made to be effective on Date4 ineffective, because X will not have satisfied the requirements to be an S corporation as of that date. A copy of this letter should be attached to the Form 8832.

In addition, based solely on the facts submitted and the representations made, we conclude that Y's S corporation election terminated on Date4 due to X's election to be an S corporation effective on that date. We conclude that this termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Y will be treated as continuing to be an S corporation on Date4 and thereafter, unless Y's S corporation election otherwise terminated under § 1362(d) for reasons not stated in this letter.

This ruling is contingent upon X filing a late entity classification election to be treated as a disregarded entity effective on Date4, as provided above. If this condition is not met, then this letter ruling is null and void. Furthermore, if this condition is not met, Y must send a notification that its S election has terminated to the service center with which Y's S election was filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding Y's eligibility to be an S corporation or the validity of its S corporation election.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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 request for a ruling, 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.

Pursuant to powers of attorney on file with this office, we are sending copies of this letter to X's and Y's authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes