Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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February 15, 2018

Legend

A   =

B   =

C   =

Shareholder 1   =

Shareholder 2   =

State 1   =

State 2   =

Date 1   =

Date 2   =

Date 3   =

Date 4   =

Date 5   =

Date 6   =

Date 7   =

Dear   :

This letter responds to a letter dated September 14, 2017 submitted on behalf of A by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

According to the information submitted, B was organized under the laws of State 1 on Date 1, and made an election to be a subchapter S corporation effective Date 1. A was organized under the laws of State 1 on Date 2, and made an election to be a subchapter S corporation effective Date 3. A formed C under the laws of State 2 on Date 5. C is treated as a disregarded entity for federal tax purposes.

On Date 4, incident to what A represents was part of a reorganization under § 368(a)(1)(F), Shareholder 1 and Shareholder 2 contributed all of their stock in B to A, resulting in A wholly owning B. On Date 6, B merged into C. In a letter dated Date 7, A sent the Internal Revenue Service a Form 8869, Qualified Subchapter S Subsidiary Election, effective on Date 4. A later discovered that its election to treat B as a Qualified Subchapter S Subsidiary (QSub) was ineffective due to B's failure to meet all the requirements of § 1361(b)(3)(B) and § 1.1361-3(a)(1) of the Income Tax Regulations at the time the election was made.

A represents that its ineffective QSub election for B was inadvertent. A further represents that no federal tax return of any person has been filed inconsistent with a valid QSub election having been made for B effective Date 4. B and A have agreed to make any adjustments required by the Service consistent with the treatment of B 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) 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) and the regulations thereunder provide relief for an ineffective S corporation election or ineffective QSub election (i.e., treating the ineffective election as effective) or inadvertent termination of an S corporation election or QSub election provided the following conditions are met:

   a. The corporation made an election under § 1362(a) or § 1361(b)(3)(B)(ii) that was ineffective or was terminated;

   b. The Service determines that circumstances resulting in the ineffectiveness or termination were inadvertent;

   c. Steps were taken by the corporation to qualify it as a small business corporation or QSub within a reasonable period of time after discovery of the ineffectiveness; and

   d. The corporation and all shareholders agree to any adjustments that the Service may require for the period.

<div align="center">Conclusion</div>

Based solely on the facts submitted and representations made, we conclude that A's election to treat B as a QSub as of Date 4 was ineffective. We also conclude that the circumstances resulting in the ineffectiveness of the QSub election were inadvertent within the meaning of § 1362(f) and A took steps to qualify as a QSub within a reasonable period after discover of the ineffectiveness. Thus, under the provisions of § 1362(f), B will be treated as a QSub effective on Date 4, provided that B's QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

Except as expressly provided herein, 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. This includes no express or imply opinion on whether B was otherwise eligible to be treated as a QSub, the tax consequences of B's merger with C, or the validity and tax consequences of the reorganization under § 368(a)(1)(F).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

_____
Bradford R. Poston
Special Counsel to the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: