

Internal Revenue Service

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LEGEND

X =

Y =

R =

S =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated February 15, 2016, and subsequent correspondence, submitted on behalf of R by R's representative, requesting a ruling under § 1361(b)(3)(D) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X was a qualified subchapter S subsidiary (QSub) of Y, an S corporation, prior to Date 1. On Date 1, a new owner that was an ineligible S corporation shareholder acquired a significant number of shares of Y. Consequently, the S election of Y and the QSub election of X terminated on Date 1.

On Date 2, Y sold all of its X stock to a new group of investors so that there was a 100% ownership change of X.

On Date 3, X shareholders exchanged 100% of their stock for stock in R making R the owner of all X stock. On Date 4, X acquired the stock of S which merged with X as of the date of acquisition leaving X as the survivor. R elected S corporation status on Date 5. R is requesting permission to elect QSub status for X on Date 5 prior to the termination of the five-year waiting period imposed by 1361(b)(3)(D).

LAW

Section 1361(b)(3)(A) provides that (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 "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation 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 qualified subchapter S subsidiary.

Section 1361(b)(3)(C) provides that if any corporation which was a QSub ceases to meet the requirements of § 1361(b)(3)(B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

Section 1361(b)(3)(D) provides that if a corporation's status as a QSub terminates, such corporation (and any successor corporation) shall not be eligible to make (i) an election to be treated as a QSub or (ii) an election to be treated as an S corporation, before its 5th taxable year which begins after the first taxable year for which such termination was effective, unless the Secretary consents to such election.

Section 1.1361-5(c)(1) provides that, absent the Commissioner's consent, and except as provided in § 1.1361-5(c)(2), a corporation whose QSub election has terminated under § 1.1361-5(a) (or a successor corporation as defined in § 1.1362-5(b)) may not make an S election under § 1362 or have a QSub election under § 1361(b)(3)(B)(ii)

made with respect to it for five taxable years (as described in § 1361(b)(3)(D)). The Commissioner may permit an S election by the corporation or a new QSub election with respect to the corporation before the five-year period expires. The corporation requesting consent to make the election has the burden of establishing that, under the relevant facts and circumstances, the Commissioner should consent to a new election.

CONCLUSION

Based solely on the facts and the representations submitted, we grant permission for R to make a QSub election for X effective Date 5 prior to the five years after X's QSub status terminated Date 1.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed or implied regarding X's eligibility to be a QSub or R's eligibility to be an S corporation.

A copy of this letter should be attached to R's federal income tax return for its taxable year for which X's QSub election is accepted as timely filed. A copy of this letter is being sent to R for that purpose.

This ruling is directed only to the taxpayer who requested 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 representative.

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,

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

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes