



## FACTS

According to the information submitted, Sub, a State corporation, elected to be an S corporation effective Date 1. X, a State corporation, elected to be an S corporation effective Date 2. On Date 3, incident to what X represents was part of a reorganization under § 368(a)(1)(F), Sub's sole shareholder, A, contributed all of the stock in Sub to X, thereby causing Sub to become a wholly owned subsidiary of X. Sub then converted to a State limited liability company on Date 4, and by default was classified as a disregarded entity for federal tax purposes. Afterwards, on Date 5, X made an election to treat Sub as a qualified subchapter S subsidiary (QSub) effective Date 3. Recently, X discovered that its election to treat Sub as a QSub was ineffective because Sub failed to meet the requirements of § 1361(b)(3)(B) at the time the election was made.

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 filed its Year return consistently with Sub being treated as a QSub effective Date 3. Finally, Sub and X agree to make any adjustments required by the Secretary 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, in part, that if (1) an election under § 1361(b)(3)(B)(ii) by any corporation 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), (2) the Secretary determines that the circumstances resulting in the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, steps were taken so that the corporation for which the election was made is a QSub, and (4) the corporation for

which the election was made, 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 a QSub) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation will be treated as a QSub 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 3 was ineffective. We also conclude that the circumstances resulting in the ineffectiveness of the QSub election were inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), Sub will be treated as a QSub effective Date 3 through Date 4, provided that Sub's QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code and the regulations thereunder. Specifically, we express or imply no opinion regarding whether Sub was otherwise eligible to be treated as a QSub or the validity of the reorganization under § 368(a)(1)(F) or its tax consequences.

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 requested ruling, it is subject to verification on examination.

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 X's authorized representatives.

Sincerely,

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

Enclosure:

Copy of this letter for § 6110 purposes

PLR-123845-23

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cc:

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