

INTERNAL REVENUE SERVICE

Index No. 1361.00-00;
9100.00-00

Number: **199906005**

Release Date: 2/12/1999

CC:DOM:P&SI:3/PLR-113301-98

October 28, 1998

Legend:

Company =

Subsidiary =

Date 1 =

Dear

This letter responds to a submission from your authorized representative dated June 24, 1998, and subsequent correspondence, requesting a ruling that Company be given an extension of time to file an election to treat Subsidiary as a qualified subchapter S subsidiary (QSSS) under section 1361(b)(3)(B) of the Internal Revenue Code.

FACTS

Company filed an election to be treated as an S corporation effective as of Date 1. As of Date 1, Company also owned 100 percent of Subsidiary. It has been represented that Company always intended to treat Subsidiary as a QSSS effective Date 1. However, the election to treat Subsidiary as a QSSS was not timely filed.

DISCUSSION

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is held by the S corporation, and the S corporation elects to treat the corporation as a QSSS. The statutory provision does not, however, provide guidance on the manner in which the QSSS election is made or the effective date of the election.

On January 13, 1997, the Service published Notice 97-4, 1997-2 I.R.B. 24, providing a temporary procedure for the making of a QSSS election. Under Notice 97-4, a parent S corporation makes a QSSS election for a subsidiary by filing a Form 966, subject to certain specified modifications, with the appropriate service center. The election may be effective on the date Form 966 is filed or up to 75 days prior to the filing, provided that date is not before the effective date of section 1308 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755, and that the subsidiary otherwise qualifies as a QSSS for the entire period for which the retroactive election is in effect.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner may grant a reasonable extension of time 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 the term "regulatory election" as including an election whose deadline is prescribed by a notice published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making 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 evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSION

In the present situation, the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company is granted an extension of time for making the election to treat Subsidiary as a QSSS until 60 days following the date of this letter. Taxpayer should follow the procedures set forth in Notice 97-4 when making the election. A copy of this letter should be submitted with the election.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company is an S corporation or whether Subsidiary is a QSSS for federal tax purposes.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special
Industries)

Attachments:
Copy of this letter
Copy for section 6110 purposes