

Internal Revenue Service

Department of the Treasury

Number: **200403079**
Release Date: 1/16/2004
Index Number: 1362.01-03, 9100.31-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2-PLR-133429-03
Date:
September 25, 2003

LEGEND

X =

Y =

A =

B =

State =

Date 1 =

Dear

This responds to your letter dated May 5, 2003 and subsequent information, submitted on behalf of X, requesting time extensions under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to be treated as an association taxable as a corporation for federal tax purposes and to elect to treat Y as a qualified subchapter S subsidiary (QSub). Additionally, X is requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

The information submitted states that X was organized as a business trust under the laws of State on Date 1. On Date 1, A and B, the shareholders of Y, an S corporation, contributed all of their shares in Y to X in exchange for ownership interests in X. A and B intended for X to elect to be treated as an association taxable as a

corporation and then to elect to be treated as an S corporation, with both elections effective on Date 1. In addition, X intended to make a QSub election for Y, effective on Date 1. However, due to inadvertence, Form 8832, Entity Classification Election, and Form 2553, Election by a Small Business Corporation, were not timely filed for X. Additionally, a valid QSub election was not made with respect to Y.

LAW AND ANALYSIS

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

Section 301.7701-3(b)(1) provides that an eligible entity with two or more members is a partnership unless it elects otherwise.

Section 301.7701-3(c)(1)(i) allows an eligible entity to elect to change its classification by filing Form 8832. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after the filing date.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or if the election is made after the date prescribed for making such an election, and the

Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and 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) defines a QSub as a domestic corporation, which is not an ineligible corporation, in which 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date 1. X should make the election by filing a Form 8832 with the appropriate service center. A copy of this letter should be attached to that form. A copy is enclosed for that purpose.

We also conclude that X has established reasonable cause for failing to make a timely election to be an S corporation. Accordingly, provided that X makes the above-mentioned election to be treated as an association taxable as a corporation and makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 1, within 60 days following the date of this letter, then such election will be treated as timely made for Date 1. A copy of this letter should be attached to that form.

Finally, X is granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective Date 1. Accordingly, provided that X makes the above-mentioned election by filing a Form 8869 with the appropriate service center to be treated as an association taxable as a corporation, followed by an S corporation election and makes a QSub election for Y within 60 days following the date of this letter, then such election will be treated as timely made for Date 1. A copy of this letter should be attached to that form.

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. In particular, no opinion is expressed concerning whether X was or is a small business corporation or whether Y is or was eligible to be a QSub.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer and the taxpayer's second representative.

Sincerely,

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes