

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:
CC:PSI:3 PLR-137099-03
Date:
October 21, 2003

LEGEND

Parent =

Sub1 =

Sub2 =

State =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear :

This responds to a letter, dated June 5, 2003, requesting that Parent be given an extension of time in which to elect to treat its subsidiaries as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, Parent is a State corporation which incorporated on d1 and elected to be an S corporation effective d2. Sub1 incorporated on d3 in State. On d4, Parent purchased 100 percent of the stock of Sub1 for cash.

Sub2 incorporated on d5 in State. Parent transferred 100 percent of its assets (other than the stock of Sub1) to Sub2 in exchange for 100 percent of Sub2's stock.

Parent intended to elect QSub status for Sub1 and Sub2 effective d2 and d5 respectively. However, due to inadvertence, the elections were not filed timely.

LAW AND ANALYSIS

Section 1361(a)(1) generally provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b) provides the definition of a small business corporation for purposes of subchapter S.

Section 1361(b)(1)(B) provides that, in order to be a small business corporation, a domestic corporation cannot have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation as described in § 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides that an S corporation may elect to treat an eligible subsidiary as a QSub by filing the form prescribed by the Service and that the election may be effective no more than two months and 15 days prior to the date of the filing. Notice 2000-58, 2000-2 C.B. 491, provides that Form 8869, Qualified Subchapter S Subsidiary Election, should be used to elect QSub treatment.

Section 301.9100-1(c) generally permits the Commissioner to grant a reasonable extension of time to make a regulatory election if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonable and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Further, § 301.9100-2 provides automatic extensions of time for making certain elections and § 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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

Based solely on the facts provided and the representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. Accordingly, Parent is granted an extension of time of 60 days from the date of this letter to make elections to treat Sub1 and Sub2 as QSubs, effective d2 and d5, respectively. Parent should submit properly completed Forms 8869 to the appropriate service center each with a copy of this letter. Copies are enclosed for that purpose.

Except for the specific rulings above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described under any other provision of the Code. Specifically, no opinion is expressed or implied as to whether Parent is a valid S corporation or whether its subsidiaries, Sub1 and Sub2, are otherwise eligible to be QSubs.

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.

Pursuant to the power of attorney on file with this office, copies of this letter are being sent to Parent's authorized representatives.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (3)
2 Copies of this letter
Copy for § 6110 purposes

cc: